

EXPLANATORY STATEMENT

(Issued under the Authority of the Minister for Small and Family Business, the Workplace and Deregulation)

Fair Entitlements Guarantee Act 2012

Fair Entitlements Guarantee

(Extended operation of the Act in relation to Custom Bus Australia Pty Ltd in Administration) Declaration 01/2018

The purpose of this instrument is to declare that the *Fair Entitlements Guarantee Act 2012* (the Act) applies to persons who were employed, but are no longer employed by Custom Bus Australia Pty Ltd, an entity under administration under Part 5.3A of the *Corporations Act 2001* (the Corporations Act). The Act does not otherwise apply to persons whose former employer is in administration.

Legislative background

The Act commenced on 5 December 2012 and creates a scheme to provide financial assistance for workers who have not been fully paid for work done for insolvents or bankrupts.

Section 10 of the Act sets out the conditions for an individual's eligibility for an advance under the Act. One of the conditions is that an 'insolvency event' has happened to the person's employer. An 'insolvency event', as defined in section 5 of the Act, happens when a liquidator of the employer is appointed (provisionally or otherwise) but does not include the employer being under administration under Part 5.3A of the Corporations Act.

Section 49 of the Act allows the Minister to declare that the Act applies to persons who were employed, but are no longer employed, by a specified person that is in administration under Part 5.3A of the Corporations Act if satisfied that:

- The employer's creditors are expected to resolve at a meeting convened under section 439A of the Corporations Act that the employer be wound up; and
- If the declaration is made, it will be practicable to administer the Act as it will apply because of the declaration in relation to the specified employer.

Effect of the declaration

The effect of the declaration is that the Act applies to former employees of Custom Bus Australia Pty Ltd as if the relevant administrator were a liquidator appointed when the administrator was appointed, and the reference to an 'insolvency event' in paragraph 14(2)(a) of the Act is a reference to this declaration being made.

This will allow any former employees of Custom Bus Australia Pty Ltd to make a claim under the Act, and receive an advance if they are eligible.

Consultation

To be satisfied of the factors listed in subsection 49(2) of the Act, consultation was undertaken with the insolvency practitioner responsible for the administration of Custom Bus Australia Pty Ltd

The declaration is a legislative instrument subject to the *Legislation Act 2003*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

The *Fair Entitlements Guarantee (Extended operation of the Act in relation to Custom Bus Australia Pty Ltd in Administration) Declaration 01/2018* is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Human rights implications

Article 9 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) provides that, ‘the State Parties to the present Covenant recognise the right of everyone to social security, including social insurance.’ The Committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access benefits, whether in cash or in kind, without discrimination in order to secure protection from lack of work-related income caused by unemployment.¹

The *Fair Entitlements Guarantee Act 2012* establishes an assistance scheme that is intended to operate as a safety net for persons whose employment has ended due to the insolvency or bankruptcy of their employer. This safety net could be characterised as ‘social insurance’ because it ensures that employees’ unpaid entitlements are met when their employer becomes insolvent. It thus seeks to protect individuals from lack of work-related income due to unemployment.

This declaration expands the operation of the Act to an employer in administration under the *Corporations Act 2001*. The effect is that the employees whose access to unpaid entitlements would be delayed until such time as a liquidator is appointed, will be able to apply for assistance earlier. This supports the right to access benefits in order to secure protection from lack of work-related income caused by unemployment.

Conclusion

This declaration is compatible with human rights as it does not raise any human rights issues.

Craig Laundry
Minister for Small and Family Business, the Workplace and Deregulation

¹ Committee on Economic, Social and Cultural Rights, *General Comment 19, The Right to Social Security*, U.N. Doc. E/C.12/GC/19 (2008)