



Fair Entitlements Guarantee Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 24 November 2022

David Hurley
Governor-General

By His Excellency's Command

Tony Burke
Minister for Employment and Workplace Relations

Contents

Part 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Schedule 2.....	1
Part 2—Schemes for assistance of workers who were not employees	2
6 Scheme for assistance of workers who were not employees—TCF contract outworkers	2
7 Saving provision for the <i>Fair Entitlements Guarantee Regulation 2012</i>	3
Schedule 1—Modifications of the Act in relation to TCF contract outworkers	4
<i>Fair Entitlements Guarantee Act 2012</i>	4
Schedule 2—Repeal of the Fair Entitlements Guarantee Regulation 2012	8
<i>Fair Entitlements Guarantee Regulation 2012</i>	8

Part 1—Preliminary

1 Name

This instrument is the *Fair Entitlements Guarantee Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after the last day on which a resolution disallowing this instrument could be passed by either House of the Parliament under the <i>Legislation Act 2003</i> .	25 March 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Fair Entitlements Guarantee Act 2012*.

4 Definitions

In this instrument:

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, or has done, work as an outworker in the textile, clothing or footwear industry otherwise than as an employee.

5 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

Section 6

Part 2—Schemes for assistance of workers who were not employees

6 Scheme for assistance of workers who were not employees—TCF contract outworkers

- (1) This section applies in relation to a TCF contract outworker.
- (2) For the purposes of subsection 50(1) of the Act, the specified person for a TCF contract outworker is a person:
 - (a) for whom the TCF contract outworker performed work directly (within the meaning of section 17A of the *Fair Work Act 2009*) in the capacity of an outworker; 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 the purposes of subsections 50(1) and (2) of the Act, this instrument:
 - (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) of this section (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) provides for 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 (the *Act provisions*), modified in accordance with:
 - (a) Schedule 1 to this instrument; and
 - (b) subject to the modifications in Schedule 1 to this instrument—subsection (5) of this section.

Note: Schedule 1 contains specific modifications of particular provisions of the Act that apply in addition to the general modifications in subsection (5) of this section.

- (5) For the purposes of paragraph (4)(b), the modifications are as follows:
 - (a) the scheme applies in relation to a TCF contract outworker in the same way as the Act provisions apply to an employee or former employee;
 - (b) the scheme applies to the specified person for a TCF contract outworker in the same way as the Act provisions apply to the employer of an employee;
 - (c) the scheme applies to work done by a TCF contract outworker, and to the engagement of a TCF contract outworker, (otherwise than as an employee) in the same way as the Act provisions apply to the employment of an employee;
 - (d) the scheme applies in relation to the TCF contract outworker entitlements (within the meaning of the scheme) of a TCF contract outworker in the same way as the Act provisions apply to the employment entitlements of an employee;
 - (e) a reference in the Act provisions to the Act includes a reference to the scheme.

7 Saving provision for the *Fair Entitlements Guarantee Regulation 2012*

Despite the repeal of the *Fair Entitlements Guarantee Regulation 2012* (the ***repealed regulation***), the repealed regulation continues to apply, on and after the commencement of this instrument, in relation to an insolvency event that occurred before the repeal of the repealed regulation.

Schedule 1—Modifications of the Act in relation to TCF contract outworkers

Note: See paragraph 6(4)(a).

Fair Entitlements Guarantee Act 2012

1 Section 5

Insert:

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

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

- (a) for whom the TCF contract outworker performed work directly (within the meaning of section 17A of the *Fair Work Act 2009*) in the capacity of an outworker; 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.

Note: A reference in this scheme to an employer of an employee is, if the reference is not modified by Schedule 1 to the *Fair Entitlements Guarantee Regulations 2022*, generally a reference to the specified person for a TCF contract outworker (see paragraph 6(5)(b) of those regulations).

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

Note: A reference in this scheme to an employee is, if the reference is not modified by Schedule 1 to the *Fair Entitlements Guarantee Regulations 2022*, generally a reference to a TCF contract outworker (see paragraph 6(5)(a) of those regulations).

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

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

Note: A reference in this scheme to employment entitlements is, if the reference is not modified by Schedule 1 to the *Fair Entitlements Guarantee Regulations 2022*, generally a reference to TCF contract outworker entitlements (see paragraph 6(5)(d) of those regulations).

2 Section 10

Repeal the section, 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;

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- (b) at or after the repeal of the *Fair Entitlements Guarantee Regulation 2012*, 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

- (2) If the TCF contract outworker did work for 2 or more of the partners of a partnership, 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.

3 Sections 12 and 13

Repeal the sections.

4 Subsection 14(1)

Omit “this Act”, substitute “this scheme”.

5 Subsections 14(4) and (5)

Repeal the subsections.

6 Subsections 16(2) to (4)

Repeal the subsections.

7 Section 24

Repeal the section, 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.

8 Sections 29 and 30

Repeal the sections.

9 Subsection 31(3)

Repeal the subsection.

10 Paragraph 33(a)

Omit “sections 29, 30 and 31 apply”, substitute “section 31 applies”.

11 Section 45

Repeal the section, 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 for a TCF contract outworker; or
 - (ii) an officer (as defined in the *Corporations Act 2001*) of a specified person for a TCF contract outworker; or
 - (iii) an insolvency practitioner for a specified person for a TCF contract outworker; or
 - (iv) a current or former employee of a specified person for a TCF contract outworker; or
 - (v) a TCF contract outworker.

12 Section 49

Repeal the section, substitute:

49 Extended operation of this scheme 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 of section 17A of the *Fair Work Act*

2009), but no longer do work, for a person identified in the declaration (the **identified person**) that is under administration under Part 5.3A of the *Corporations Act 2001* (whether or not the identified person was under administration while any of the former outworkers did the work).

- (2) The Minister may make the declaration only if the Minister is satisfied that:
- (a) the identified person's creditors are expected to resolve at a meeting convened under section 439A of the *Corporations Act 2001* that the identified 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 identified 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 identified 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 identified person).

Revoking a declaration

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

13 Section 50

Repeal the section.

14 Section 51

Repeal the section.

Note: As section 51 of the Act appropriates the Consolidated Revenue Fund for the purposes of payments made under the scheme, as well as payments otherwise made under the Act, there is no equivalent of section 51 in the scheme.

15 Section 52

Repeal the section.

Note: As section 52 of the Act provides for the recovery of payments made under the scheme, as well as payments otherwise made under the Act, there is no equivalent of section 52 in the scheme.

16 Section 55

Repeal the section.

Schedule 2—Repeal of the Fair Entitlements Guarantee Regulation 2012

Fair Entitlements Guarantee Regulation 2012

1 The whole of the instrument

Repeal the instrument.