

**FAIR ENTITLEMENTS GUARANTEE (TUFTEX CARPETS PTY LTD IN ADMINISTRATION)  
DECLARATION 2024**

**EXPLANATORY STATEMENT**

Issued under the Authority of the Minister for Employment and Workplace Relations  
under section 49 of the *Fair Entitlements Guarantee Act 2012*

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, Tuftex Carpets Pty Ltd (Administrators Appointed) (“Tuftex Carpets”) which is 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 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 in 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 employer that is under 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 Tuftex Carpets 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 Tuftex Carpets to make a claim under the Act and if they are eligible, receive an advance.

*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 Tuftex Carpets.

## **Regulation Impact Statement**

The Office of Impact Analysis was consulted regarding this instrument and indicated that a detailed Impact Analysis was not required (OIA24-07255).

The Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Declaration takes effect on the day after it is registered on the Federal Register of Legislation.

This instrument is not exempt from sunseting under 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 (Tuftex Carpets Pty Ltd in Administration) Declaration 2024* 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.<sup>1</sup>

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 advances of unpaid employment entitlements can be made to eligible former employees. 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.

Tony Burke  
Minister for Employment and Workplace Relations

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