

FAIR ENTITLEMENTS GUARANTEE (REX AIRLINES 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*

PURPOSE AND OPERATION OF THE INSTRUMENT

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 Rex Airlines Pty Ltd (Administrators Appointed) A.C.N. 642 400 048 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 to an employer:

- when a liquidator of the employer is appointed (provisionally or otherwise) under the Corporations Act; or
- when the employer becomes a bankrupt under the *Bankruptcy Act 1966*; or
- if the person is or was employed for a partnership by 2 or more of the partners - at the first time an event described above happens, or has happened, to all of the partners by whom the person is or was employed

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 Rex Airlines Pty Ltd (Administrators Appointed) 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 Rex Airlines Pty Ltd (Administrators Appointed) to make a claim under the Act and have their claims for an advance assessed and paid in accordance with the Act.

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 the Rex Airlines Pty Ltd.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis was consulted regarding this instrument and indicated that a detailed Impact Analysis was not required (OIA24-07890).

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

Fair Entitlements Guarantee (Rex Airlines Pty Ltd in Administration) Declaration 2024

The *Fair Entitlements Guarantee (Rex Airlines 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*.

Overview of the Legislative Instrument

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 Rex Airlines Pty Ltd (Administrators Appointed) 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.

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.

The effect of the declaration is that the Act applies to former employees of Rex Airlines Pty Ltd (Administrators Appointed) 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 Rex Airlines Pty Ltd (Administrators Appointed) to make a claim under the Act and have their claims for an advance assessed and paid in accordance with the Act.

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

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)

The Act establishes an assistance scheme that is intended to operate as a safety net for persons whose employment has ended due to the insolvency of their employer. This safety net could be characterised as ‘social insurance’ because it ensures that employees’ unpaid entitlements are met when their employer enters liquidation or bankruptcy. 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.

Senator the Hon Murray Watt

Minister for Employment and Workplace Relations

NOTES ON SECTIONS

Section 1 – Name

Section 1 provides that the title of the instrument is the *Fair Entitlements Guarantee (Rex Airlines Pty Ltd in Administration) Declaration 2024*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the instrument is made under section 49 of the *Fair Entitlements Guarantee Act 2012*.

Section 4 – Declaration

Section 4 declares that the Fair Entitlements Guarantee Act 2012 applies in relation to persons who were employed, but are no longer employed, by Rex Airlines Pty Ltd (Administrators Appointed) which is an entity in administration under the *Corporations Act 2001*.