



Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

No. 33, 2012

**An Act to amend the *Fair Work Act 2009*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the *Fair Work Act 2009*, and for
related purposes**

[Assented to 15 April 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fair Work Amendment (Textile,
Clothing and Footwear Industry) Act 2012*.

Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 No. 33, 2012 1

2 Commencement

- (1) Each provision of this Act 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 |
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 15 April 2012 |
| 2. Schedule 1 | A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 1 July 2012 (see F2012L01396) |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Fair Work Act 2009

1 At the end of section 4

Add:

Application, saving and transitional provisions for amendments

- (4) Schedule 1 contains application, saving and transitional provisions relating to amendments of this Act.

2 After subsection 9(5)

Insert:

- (5A) Part 6-4A contains special provisions about TCF outworkers.

3 At the end of Division 3 of Part 1-1

Add:

9A Application, saving and transitional provisions for amendments (Schedule 1)

Schedule 1 contains application, saving and transitional provisions relating to amendments of this Act.

Note: Application, saving and transitional provisions relating to the enactment of this Act, and States becoming referring States, are in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

4 At the end of section 11

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

4A Section 12

Insert:

apparent indirectly responsible entity: see subsection 789CC(2).

5 Section 12

Insert:

Commonwealth outworker entity means an entity that is an outworker entity otherwise than because of section 30F or 30Q.

Note: Sections 30F and 30Q extend the meaning of ***outworker entity*** in relation to a referring State.

6 Section 12

Insert:

directly, when used in relation to TCF work: see section 17A.

7 Section 12 (at the end of the definition of ***employee***)

Add:

Note 3: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

8 Section 12 (definition of ***employee record***)

Repeal the definition, substitute:

employee record, in relation to an employee, means:

- (a) something that is an employee record, in relation to the employee, for the purposes of the *Privacy Act 1988*; or
- (b) in the case of a TCF contract outworker who is taken to be an employee by Division 2 of Part 6-4A of this Act—something that would be an employee record, in relation to the outworker, for the purposes of the *Privacy Act 1988*, if the outworker were an employee for the purposes of that Act.

9 Section 12 (at the end of the definition of ***employer***)

Add:

Note 3: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

10 Section 12

Insert:

indirectly, when used in relation to TCF work: see section 17A.

11 Section 12

Insert:

indirectly responsible entity, in relation to TCF work performed by a TCF outworker: see subsections 789CA(3), (4) and (5).

12 Section 12 (note at the end of the definition of *national system employee*)

Omit “Note:”, substitute “Note 1:”.

13 Section 12 (at the end of the definition of *national system employee*)

Add:

Note 2: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

14 Section 12 (note at the end of the definition of *national system employer*)

Omit “Note:”, substitute “Note 1:”.

15 Section 12 (at the end of the definition of *national system employer*)

Add:

Note 2: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

16 Section 12

Insert:

responsible person, in relation to TCF work performed by a TCF outworker: see subsection 789CA(1).

17 Section 12

Insert:

TCF award worker: see subsection 483A(1A).

18 Section 12

Insert:

TCF contract outworker: see subsection 789BB(2).

19 Section 12

Insert:

TCF outwork code: see section 789DA.

20 Section 12 (definition of *TCF outworker*)

Omit “whose work is covered by a TCF award”.

21 Section 12

Insert:

TCF work means work in the textile, clothing or footwear industry.

22 Section 12

Insert:

unpaid amount, in relation to TCF work performed by a TCF outworker: see subsections 789CA(1) and (4).

23 After section 17

Insert:

17A Meaning of *directly* and *indirectly* (in relation to TCF work)

- (1) If there is a chain or series of 2 or more arrangements for the supply or production of goods produced by TCF work performed by a person (the *worker*), the following provisions have effect:
 - (a) the work is taken to be performed *directly* for the person (the *direct principal*) who employed or engaged the worker (and the direct principal is taken to have arranged for the work to be performed *directly* for the direct principal);
 - (b) the work is taken to be performed *indirectly* for each other person (an *indirect principal*) who is a party to any of the arrangements in the chain or series (and each indirect principal is taken to have arranged for the work to be performed *indirectly* for the indirect principal).
- (2) This section does not limit the circumstances in which TCF work is performed *directly* or *indirectly* for a person (or in which a person

arranges for TCF work to be performed *directly* or *indirectly* for the person).

- (3) This section does not apply for the purposes of Division 2A or 2B of Part 1-3.

24 At the end of section 25

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances). However, that Division does not apply for the purposes of Divisions 2A and 2B of this Part.

25 At the end of section 42

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

26 At the end of section 60

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

27 At the end of section 133

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

28 At the end of section 170

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

29 After subsection 203(2)

Insert:

- (2A) If, in accordance with this Part, the enterprise agreement includes terms that would be outworker terms if they were included in a modern award, the flexibility term must not allow the effect of those outworker terms to be varied.

30 At the end of section 259

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

31 At the end of section 283

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

32 At the end of section 301

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

33 At the end of section 308

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

34 At the end of section 322

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

35 At the end of section 335

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

36 At the end of section 380

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

37 At the end of section 407

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

38 Section 478

Omit “TCF outworkers” (wherever occurring), substitute “TCF award workers”.

39 Paragraph 480(b)

Omit “TCF outworkers”, substitute “TCF award workers”.

40 Subdivision AA of Division 2 of Part 3-4 (heading)

Repeal the heading, substitute:

Subdivision AA—Entry to investigate suspected contravention relating to TCF award workers

41 Section 483A (heading)

Repeal the heading, substitute:

483A Entry to investigate suspected contravention relating to TCF award workers

42 Subsection 483A(1)

Omit “A permit holder”, substitute “Subject to subsection (6), a permit holder”.

43 Paragraph 483A(1)(a)

Omit “TCF outworker”, substitute “TCF award worker”.

44 Paragraph 483A(1)(b)

Omit “TCF outworkers”, substitute “TCF award workers”.

45 After subsection 483A(1)

Insert:

(1A) A *TCF award worker* is:

- (a) an employee whose work is covered by a TCF award; or
- (b) an individual who, for the purpose of a contract for the provision of services, performs work that is covered by a TCF award.

46 At the end of section 483A

Add:

- (6) Particular premises of a person cannot be entered under paragraph (1)(a) if:
- (a) the person is accredited (however described) by a person or body specified by name in the regulations; and
 - (b) the accreditation is in writing and is in force; and
 - (c) the premises are identified in the accreditation as being the principal place of business of the accredited person.

Note: The fact that this subsection may result in certain premises not being able to be entered under paragraph (1)(a) for the purpose of investigating a particular suspected contravention does not:

- (a) prevent the premises being entered for that purpose under Subdivision A; or
 - (b) prevent the premises being entered under paragraph (1)(b) of this section.
- (7) Before the Governor-General makes a regulation specifying a particular person or body for the purposes of paragraph (6)(a), the Minister must be satisfied that the person or body:
- (a) has aims that are consistent with the objects of Part 6-4A; and
 - (b) has the endorsement of:
 - (i) at least one employee organisation that is entitled to represent the industrial interests of TCF award workers; and
 - (ii) at least one employer organisation that is entitled to represent the industrial interests of persons who employ or engage TCF award workers.

47 Subparagraph 483B(3)(a)(i)

Omit “employs a TCF outworker”, substitute “employs or engages a TCF award worker”.

48 Subparagraphs 483B(3)(a)(ii) and (iii)

Omit “TCF outworker”, substitute “TCF award worker”.

49 Section 484

Omit “TCF outworkers”, substitute “TCF award workers”.

50 Paragraph 518(2)(ca)

Omit “TCF outworker”, substitute “TCF award worker”.

51 Paragraph 518(2)(cb)

Omit “TCF outworkers”, substitute “TCF award workers”.

52 Paragraphs 518(2)(cc) and (d)

Omit “TCF outworker”, substitute “TCF award worker”.

53 Paragraphs 518(3)(b) and (c)

Omit “TCF outworker”, substitute “TCF award worker”.

54 At the end of section 529

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

55 At the end of section 538

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

56 At the end of section 561

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

57 At the end of section 574

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

58 At the end of section 680

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

59 At the end of section 720

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

60 At the end of section 736

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

61 After Part 6-4

Insert:

Part 6-4A—Special provisions about TCF outworkers

Division 1—Introduction

789AA Guide to this Part

This Part contains special provisions about TCF outworkers.

Division 2 provides for TCF contract outworkers to be taken to be employees in certain circumstances for the purposes of most of the provisions of this Act.

Division 3 provides for TCF outworkers (whether employees or contractors) to recover unpaid remuneration from entities that are indirectly responsible for work done by the outworkers.

Division 4 allows the regulations to prescribe a code dealing with standards of conduct and practice relating to TCF outwork.

Division 5 contains miscellaneous provisions.

789AB Meanings of *employee* and *employer*

In this Part, *employee* and *employer* have their ordinary meanings.

789AC Objects of this Part

The objects of this Part are to eliminate exploitation of outworkers in the textile, clothing and footwear industry, and to ensure that those outworkers are employed or engaged under secure, safe and fair systems of work, by:

- (a) providing nationally consistent rights and protections for those outworkers, regardless of whether they are employees or contractors; and
- (b) establishing an effective mechanism by which those outworkers can recover amounts owing to them in relation to their work from other parties in a supply chain; and
- (c) providing for a code dealing with standards of conduct and practice to be complied with by parties in a supply chain.

Division 2—TCF contract outworkers taken to be employees in certain circumstances**789BA Provisions covered by this Division**

- (1) This Division covers the provisions of this Act, other than the following provisions (and other than regulations made for the purposes of the following provisions):
 - (a) Division 1, and this Division, of this Part;
 - (b) Divisions 2A and 2B of Part 1-3 (application of this Act in referring States);
 - (c) Part 3-4 (right of entry);
 - (d) Part 3-5 (stand down);
 - (e) Part 6-3 (extension of National Employment Standards entitlements);
 - (f) Part 6-4 (additional provisions relating to termination of employment);
 - (g) Part 1 of Schedule 1.
- (2) Provisions of this Act that are not covered by this Division are to be interpreted disregarding the effect of this Division in relation to other provisions of this Act.

Note: For example, references to national system employees and national system employers, in provisions of this Act that are not covered by this Division, are to be interpreted disregarding the effect of this

Division in relation to the definitions of those expressions in sections 13 and 14.

- (3) References in provisions that are covered by this Division to matters dealt with in, or occurring under, provisions of this Act that are not covered by this Division (the *excluded provisions*) are to be interpreted having regard to the fact that this Division does not apply for the purposes of the excluded provisions.

789BB TCF contract outworkers taken to be employees in certain circumstances

- (1) For the purposes of the provisions covered by this Division:
- (a) a TCF contract outworker is taken to be an employee (within the ordinary meaning of that expression), and to be a national system employee, in relation to particular TCF work performed by the outworker, if:
 - (i) the work is performed directly or indirectly for a Commonwealth outworker entity; and
 - (ii) if the entity is a constitutional corporation—the work is performed for the purposes of a business undertaking of the corporation; and
 - (b) the person (whether a Commonwealth outworker entity referred to in subparagraph (a)(i) or another person) that engages the outworker is taken to be the employer (within the ordinary meaning of that expression), and to be a national system employer, of the outworker in relation to the TCF work.

Note 1: See section 17A for when TCF work is performed *directly* or *indirectly* for a person.

Note 2: See also section 789BC, which allows regulations to deal with matters relating to TCF contract outworkers who are taken by this section to be employees.

- (2) A *TCF contract outworker* is a TCF outworker who performs work other than as an employee.
- (3) In interpreting any of the following for the purposes of the provisions covered by this Division:
- (a) provisions of this Act;

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- (b) any instrument that is relevant to the relationship between the TCF contract outworker and the person referred to in paragraph (1)(b);
an interpretation that is consistent with the objective stated in subsection (4) is to be preferred to an interpretation that is not consistent with that objective.
- (4) The objective is that a TCF contract outworker who is taken to be an employee in relation to TCF work should have the same rights and obligations in relation to the work as an employee would have if he or she were employed by the person referred to in paragraph (1)(b) to do the work.
- (5) This section has effect subject to regulations made for the purposes of section 789BC.

789BC Regulations relating to TCF outworkers who are taken to be employees

- (1) For the purpose of furthering the objective stated in subsection 789BB(4), the regulations may do either or both of the following in relation to TCF outworkers (*deemed employees*) who are taken by section 789BB to be employees of other persons (*deemed employers*) in relation to TCF work:
- (a) provide that provisions covered by this Division apply in relation to deemed employees and deemed employers with specified modifications;
 - (b) otherwise make provision relating to how provisions covered by this Division apply in relation to deemed employees and deemed employers.
- (2) Regulations made for the purposes of subsection (1) may provide differently:
- (a) for the purposes of different provisions; or
 - (b) in relation to different situations.
- (3) This section does not allow regulations to:
- (a) modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence; or
 - (b) include new provisions that create offences.

Division 3—Recovery of unpaid amounts

789CA When this Division applies

Outworker not paid for TCF work in certain circumstances

- (1) This Division applies if:
- (a) a TCF outworker performs TCF work for a person (the **responsible person**):
 - (i) as an employee of the responsible person; or
 - (ii) under a contract for the provision of services to the responsible person; and
 - (b) the responsible person does not pay an amount (the **unpaid amount**) that is payable, in relation to the TCF work, by the responsible person:
 - (i) to the outworker; or
 - (ii) to another person, for the benefit of the outworker; on or before the day when the amount is due for payment; and
 - (c) the unpaid amount is payable under:
 - (i) a contract; or
 - (ii) this Act, or an instrument made under or in accordance with this Act; or
 - (iii) another law of the Commonwealth; or
 - (iv) a transitional instrument as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
 - (v) a State or Territory industrial law, or a State industrial instrument.
- Note: For the purpose of this Division, the effect of Division 2 must be taken into account in determining whether a TCF outworker performs work as a national system employee of a national system employer.
- (2) Without limiting paragraph (1)(b), the unpaid amount may (subject to paragraph (1)(c)) be an amount of any of the following kinds that relates to (or is attributable to) the TCF work:
- (a) an amount payable by way of remuneration or commission;
 - (b) an amount payable in respect of leave;

- (c) an amount payable by way of contributions to a superannuation fund;
- (d) an amount payable by way of reimbursement for expenses incurred.

Meaning of indirectly responsible entity

- (3) Subject to subsections (4) and (5), a person is an ***indirectly responsible entity*** in relation to the TCF work if:
 - (a) the person is a Commonwealth outworker entity; and
 - (b) the TCF work was performed indirectly:
 - (i) for the entity; and
 - (ii) if the entity is a constitutional corporation—for the purposes of a business undertaking of the corporation.

Note: See section 17A for when TCF work is performed ***indirectly*** for a person.

Extent of liability of indirectly responsible entity

- (4) If subsection (3) is satisfied in relation to a Commonwealth outworker entity and part only of the TCF work:
 - (a) the entity is an ***indirectly responsible entity*** in relation to that part of the TCF work; and
 - (b) for the purposes of applying this Division in relation to the entity and that part of the TCF work, the ***unpaid amount*** is so much only of the amount referred to in paragraph (1)(b) as is attributable to that part of the TCF work.

Retailer of goods not an indirectly responsible entity in certain circumstances

- (5) If:
 - (a) a Commonwealth outworker entity, as a retailer, sells goods produced by the TCF work; and
 - (b) the entity does not have any right to supervise or otherwise control the performance of the work before the goods are delivered to the entity;the entity is not an ***indirectly responsible entity*** in relation to the TCF work.

789CB Liability of indirectly responsible entity for unpaid amount

- (1) Each indirectly responsible entity (or the indirectly responsible entity, if there is only one) is liable to pay the unpaid amount.
- (3) If there are 2 or more indirectly responsible entities, those entities are jointly and severally liable for the payment of the unpaid amount.
- (4) Subject to subsection 789CE(1A), this section does not affect the liability of the responsible person to pay the unpaid amount.

789CC Demand for payment from an apparent indirectly responsible entity

- (1) The TCF outworker, or a person acting on behalf of the outworker, may give an apparent indirectly responsible entity a written demand for payment of the amount that the outworker reasonably believes the entity is liable for under section 789CB.
- (2) An entity is an *apparent indirectly responsible entity* in relation to the TCF work if the TCF outworker reasonably believes that the entity is an indirectly responsible entity in relation to the TCF work.
- (3) The demand must:
 - (a) specify the amount, and identify the responsible person; and
 - (b) include particulars of the TCF work to which the amount relates, and why the amount is payable by the entity to which the demand is given; and
 - (c) state that if the specified amount is not paid by a specified time, proceedings may be commenced against the entity under section 789CD.
- (4) The time specified for the purpose of paragraph (3)(c) must not be less than 14 days after the demand is given to the indirectly responsible entity.

789CD Court order for entity to pay amount demanded

- (1) If:
-

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- (a) in accordance with section 789CC, an apparent indirectly responsible entity has been given a demand for payment of a specified amount; and
- (b) the amount has not been paid in full by the time specified in the demand;
- a person or organisation specified in subsection (2) (the *applicant*) may commence proceedings for an order requiring the entity to pay the specified amount.
- (2) The proceedings may be commenced:
- (a) by the TCF outworker; or
- (b) on the TCF outworker's behalf, by:
- (i) an organisation that is entitled to represent the industrial interests of the outworker; or
- (ii) an inspector.
- (3) The proceedings may be commenced in:
- (a) the Federal Court; or
- (b) the Federal Magistrates Court; or
- (c) an eligible State or Territory court.
- (4) Subject only to subsections (5) and (6), the court may make an order requiring the entity to pay, to the outworker or to another person on the outworker's behalf, the specified amount (or so much of that amount as the applicant alleges is still owing).
- (5) The court must not make an order under subsection (4) if the entity satisfies the court that the entity is not liable under section 789CB to pay any of the specified amount.
- (6) If the entity satisfies the court that the amount of the entity's liability under section 789CB is less than the specified amount (or is less than so much of that amount as the applicant alleges is still owing), the court must not make an order under subsection (4) requiring the entity to pay more than that lesser amount.
- (7) In making the order, the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (8) Without limiting subsection (7), in determining the amount of interest, the court must take into account the period between the
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day when the unpaid amount was due for payment by the responsible person and the day when the order is made.

- (9) Proceedings cannot be commenced under this section more than 6 years after the time when the unpaid amount became due for payment by the responsible person.

789CE Effect of payment by entity (including entity's right to recover from responsible person)

- (1) This section applies if an entity pays an amount in discharge of a liability of the entity under section 789CB, or pursuant to an order under section 789CD.
- (1A) The payment discharges the liability of the responsible person for the unpaid amount, to the extent of the payment. This does not affect any right that the entity has to recover an equivalent amount from the responsible person (under this section or otherwise) or from another person, or to be otherwise indemnified in relation to the making of the payment.
- (2) The entity may, in accordance with this section, recover from the responsible person an amount (the *recoverable amount*) equal to the sum of:
- (a) the amount paid by the entity as mentioned in subsection (1); and
 - (b) any interest paid by the entity in relation to that amount pursuant to an order under section 789CD.
- (3) The entity may recover the recoverable amount:
- (a) by offsetting it against any amount that the entity owes to the responsible person; or
 - (b) by action against the responsible person under subsection (4).
- (4) The entity may commence proceedings against the responsible person for payment to the entity of the recoverable amount. The proceedings may be commenced in:
- (a) the Federal Court; or
 - (b) the Federal Magistrates Court; or
 - (c) an eligible State or Territory court.

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- (5) The court may make an order requiring the responsible person to pay the entity the recoverable amount (or so much of it as is still owing) if the court is satisfied that:
- (a) this section applies as mentioned in subsection (1); and
 - (b) the entity has not otherwise recovered the recoverable amount in full from the responsible person.
- (6) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (7) Without limiting subsection (6), in determining the amount of interest, the court must take into account the period between the day when the recoverable amount was paid by the entity and the day when the order is made.
- (8) Proceedings cannot be commenced under this section more than 6 years after the time when the entity paid the recoverable amount.

789CF Division does not limit other liabilities or rights

Nothing in this Division limits any other liability or right in respect of the entitlement of the TCF outworker to the unpaid amount (or to have the unpaid amount paid to another person for the outworker's benefit).

Division 4—Code of practice relating to TCF outwork

789DA Regulations may provide for a code

For the purpose of furthering the objects of this Part, the regulations may prescribe a code (the *TCF outwork code*) dealing with standards of conduct and practice to be complied with in relation to any of the following:

- (a) the employment or engagement of TCF outworkers;
- (b) arranging for TCF work to be performed, if the work:
 - (i) is to be performed by TCF outworkers; or
 - (ii) is of a kind that is often performed by TCF outworkers;
- (c) the sale of goods produced by TCF work.

Note 1: In situations where there is a chain or series of arrangements for the supply or production of goods, the TCF outwork code may (subject to

section 789DC) impose obligations on any persons that are parties to arrangements in that chain or series.

Note 2: References in other provisions to “this Act” include the code, because the code is in the regulations and is therefore within the definition of *this Act* in section 12.

789DB Matters that may be dealt with in TCF outwork code

- (1) The matters that may be dealt with in the TCF outwork code include (but are not limited to) the following:
 - (a) record keeping requirements;
 - (b) reporting on compliance with record keeping requirements, or with other requirements of the code;
 - (c) general matters relating to the operation and administration of the code.
- (2) The TCF outwork code must not specify wages or other entitlements for TCF outworkers.

789DC Persons on whom obligations may be imposed by TCF outwork code

- (1) The TCF outwork code may only impose obligations on a person if one or more of subsections (2) to (5) applies to the person.

Note: See also subsection (6), which limits the matters in relation to which obligations may be imposed.

- (2) This subsection applies to a person if the person is a national system employer that employs TCF outworkers.

Note: For the purpose of this Division, the effect of Division 2 must be taken into account in determining whether a person is a national system employer that employs TCF outworkers.

- (3) This subsection applies to a person if:
 - (a) the person is a Commonwealth outworker entity; and
 - (b) the person arranges for TCF work to be performed (directly or indirectly):
 - (i) for the person; and
 - (ii) if the person is a constitutional corporation—for the purposes of a business undertaking of the corporation; and
 - (c) the work:

- (i) is to be performed by TCF outworkers; or
- (ii) is of a kind often performed by TCF outworkers.

Note: See section 17A for when a person arranges for TCF work to be performed *directly* or *indirectly* for the person.

- (4) This subsection applies to a person if:
 - (a) the person arranges for TCF work to be performed; and
 - (b) the work:
 - (i) is to be performed by TCF outworkers; or
 - (ii) is of a kind often performed by TCF outworkers; and
 - (c) the work is to be performed indirectly:
 - (i) for another person, being a Commonwealth outworker entity; and
 - (ii) if that Commonwealth outworker entity is a constitutional corporation—for the purposes of a business undertaking of that corporation.
- (5) This subsection applies to a person if the person is a constitutional corporation that sells goods produced by TCF work.
- (6) The capacity for the TCF outwork code to impose obligations on a person is subject to the following limitations:
 - (a) the obligations that may be imposed on a person because subsection (2) applies to the person are limited to obligations relating to the person's employment of TCF outworkers;
 - (b) the obligations that may be imposed on a person because subsection (3) applies to the person are limited to obligations relating to TCF work (or an arrangement for TCF work) because of which that subsection applies to the person;
 - (c) the obligations that may be imposed on a person because subsection (4) applies to the person are limited to obligations relating to TCF work (or an arrangement for TCF work) because of which that subsection applies to the person;
 - (d) the obligations that may be imposed on a person because subsection (5) applies to the person are limited to obligations relating to the person being a seller of goods as referred to in that subsection.

789DD Other general matters relating to content of TCF outwork code

- (1) The TCF outwork code may be expressed to apply in relation to:
 - (a) all persons covered by section 789DC, or specified classes of those persons; and
 - (b) all TCF work, or specified classes of TCF work.

Note: A class of person or TCF work may (for example) be identified by reference to a particular sector of the textile, clothing or footwear industry.

- (2) The TCF outwork code may provide differently for:
 - (a) different classes of persons covered by section 789DC; or
 - (b) different classes of TCF work; or
 - (c) different situations.

789DE Relationship between the TCF outwork code and other instruments

- (1) A TCF award prevails over the TCF outwork code, to the extent of any inconsistency.
- (2) The TCF outwork code prevails over any of the following, to the extent of any inconsistency:
 - (a) an enterprise agreement;
 - (b) a workplace determination;
 - (c) an agreement-based transitional instrument, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
- (3) Subject to subsection (5), the TCF outwork code may:
 - (a) make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time; or
 - (b) make provision to the effect that compliance with a specified term of an instrument or other writing as in force or existing from time to time is taken to satisfy a particular requirement of the code.

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- (4) The kinds of instrument or other writing by reference to which the TCF outwork code may make provision as mentioned in subsection (3) include (but are not limited to) the following:
- (a) a TCF award;
 - (b) a code (however described), dealing with matters relating to outworkers, that is made under a law of a State or Territory.
- (5) The TCF outwork code cannot make provision as mentioned in subsection (3) by reference to any of the following:
- (a) an enterprise agreement;
 - (b) a workplace determination;
 - (c) an agreement-based transitional instrument, as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
- (6) Subsections (3) and (4) have effect despite subsection 14(2) of the *Legislative Instruments Act 2003*.

Division 5—Miscellaneous

789EA Part not intended to exclude or limit State or Territory laws relating to outworkers

- (1) This Part is not intended to exclude or limit the operation of a law of a State or Territory (or an instrument made under a law of a State or Territory), to the extent that the law (or instrument) relates to outworkers and is capable of operating concurrently with this Part.
- (2) A reference in subsection (1) to this Part includes a reference to any regulations made for the purposes of this Part.

62 At the end of section 791

Add:

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

63 After section 795

Insert:

795A Schedule 1

Schedule 1 has effect.

Note: Schedule 1 contains application, saving and transitional provisions relating to amendments of this Act.

64 At the end of the Act

Add:

Schedule 1—Application, saving and transitional provisions relating to amendments of this Act

Note: See section 795A.

Part 1—Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

1 Definitions

In this Part:

amended Act means this Act as amended by the amending Act.

amending Act means the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*.

commencement means the commencement of this Part.

deemed employee means a TCF contract outworker who is taken by section 789BB of the amended Act to be an employee.

deemed employer means a person who is taken by section 789BB of the amended Act to be the employer of a deemed employee.

2 Section 789BB of amended Act applies to contracts entered into after commencement

- (1) Section 789BB of the amended Act applies in relation to particular TCF work performed by a TCF contract outworker only if the

contract for the provision of services, for the purpose of which the outworker performs the work, is entered into after commencement.

- (2) Subclause (1) does not prevent regulations made for the purposes of section 789BC of the amended Act, or clause 7 of this Part, from dealing with the effect, in relation to a person who is taken by section 789BB of the amended Act to be an employee, of matters that occurred before commencement.

3 Effect on TCF contract outworker's entitlements

Accrued entitlements not affected

- (1) The amendments made by the amending Act do not affect any entitlement that a TCF contract outworker had accrued before commencement.

Effect of modern award term requiring National Employment Standards to be applied to TCF contract outworker

- (2) To avoid doubt, if:
- (a) a term of a modern award requires the principal of a TCF contract outworker to apply the National Employment Standards to the outworker as if the outworker were an employee; and
 - (b) because of Division 2 of Part 6-4A of the amended Act, the outworker is taken to be an employee (being a national system employee) of the principal for the purposes of Part 2-2 of the amended Act (the National Employment Standards);

then, to the extent that the term gives the outworker an entitlement that is the same as an entitlement (the *NES entitlement*) of the outworker (as a national system employee) under the National Employment Standards, the term operates in parallel with the outworker's NES entitlement, but not so as to give the outworker a double benefit.

4 Fair work instruments etc. made before commencement

- (1) This clause applies in relation to:
- (a) a fair work instrument made before commencement; or

- (b) a transitional instrument as continued in existence by Schedule 3 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.
- (2) A reference in the instrument to an employee or an employer does not include a deemed employee or a deemed employer, unless the instrument is, after commencement, varied to make it clear that the reference is intended to include a deemed employee or deemed employer.
- (3) This clause is not to be taken to confer a power to vary the instrument.

5 Application of Division 3 of Part 6-4A of amended Act

For the purposes of Division 3 of Part 6-4A of the amended Act, an entity is not an indirectly responsible entity in relation to particular TCF work if the arrangement to which the entity is a party, being the arrangement because of which the work can be regarded as being performed indirectly for the entity, was entered into before commencement.

6 Application of subsection 203(2A) of amended Act

Subsection 203(2A) of the amended Act applies in relation to enterprise agreements made after commencement.

7 Regulations dealing with various matters

Application, saving and transitional

- (1) The regulations may make provisions dealing with matters of an application, saving or transitional nature relating to the amendments made by the amending Act.
- (2) The provisions of this Part have effect subject to any regulations that are made for the purpose of subclause (1).

*Application to TCF outworkers of provisions of the Fair Work
(Transitional Provisions and Consequential Amendments) Act
2009*

- (3) The regulations may make provisions dealing with how the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* applies in relation to TCF outworkers.
- (4) Without limiting subclause (3), regulations made for the purposes of that subclause may:
 - (a) provide that the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* applies with specified modifications; or
 - (b) otherwise make provision relating to how provisions of that Act apply.

Regulations may be expressed to take effect before registration

- (5) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made for the purposes of subclause (1) or (3) of this clause may be expressed to take effect from a date before the regulations are registered under that Act.
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[*Minister's second reading speech made in—
Senate on 24 November 2011
House of Representatives on 22 March 2012*]