2010-2011-2012

The Parliament of the
Commonwealth of Australia

THE SENATE

Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011

(Government)

(1) Schedule 1, page 3 (after line 25), after item 4, insert:

4A Section 12

Insert:

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

[burden of proof]

(2) Schedule 1, item 61, page 14 (line 15), omit “engaged”, substitute “engages”.

[minor technical amendment]

(3) Schedule 1, item 61, page 14 (lines 25 and 26), omit “for the purpose of a contract for the provision of services (rather than as an employee)”, substitute “other than as an employee”.

[minor technical amendment]

(4) Schedule 1, item 61, page 16 (line 19), omit “instrument; and”, substitute “instrument.”.

[burden of proof]

(5) Schedule 1, item 61, page 16 (lines 20 and 21), omit paragraph 789CA(1)(d).

[burden of proof]

(6) Schedule 1, item 61, page 17 (line 27), omit “Subject to subsection (2), each”, substitute “Each”.

[steps TCF outworker must take]

(7) Schedule 1, item 61, page 17 (lines 30 to 33), omit subsection 789CB(2).

[steps TCF outworker must take]
Schedule 1, item 61, page 18 (line 4), omit “subsection (5)”, substitute “subsection 789CE(1A)”.

Schedule 1, item 61, page 18 (lines 6 to 14), omit subsection 789CB(5).

Schedule 1, item 61, page 18 (line 15) to page 20 (line 3), omit sections 789CC and 789CD, substitute:

**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:

(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 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.

[burden of proof; steps TCF outworker must take]

(11) Schedule 1, item 61, page 20 (lines 4 and 5), omit the heading to section 789CE, substitute:

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

[burden of proof]

(12) Schedule 1, item 61, page 20 (lines 6 to 9), omit subsection 789CE(1), substitute:

(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.

[burden of proof]