

As a TCF outworker, you are deemed to be a national system employee with the same rights and obligations as other national system employees. You may need to ascertain that your circumstances justify this categorization.

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.
- (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.

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.

(Fair Work Act 2009)

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);
 - (ea) Part 6-3A (transfer of business from a State public sector employer);
 - (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;
 - (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.

(Fair Work Act 2009)

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.

(Fair Work Act 2009)

Division 2—The Dictionary

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In this Act:

employee is defined in the first Division of each Part (other than Part 1-1) in which the term appears.

Note 1: The definition in the Part will define *employee* either as a national system employee or as having its ordinary meaning. However, there may be particular provisions in the Part where a different meaning for the term is specified.

Note 2: If the term has its ordinary meaning, see further subsections 15(1), 30E(1) and 30P(1).

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

(Fair Work Act 2009)

15 Ordinary meanings of *employee* and *employer*

- (1) A reference in this Act to an employee with its ordinary meaning:
- (a) includes a reference to a person who is usually such an employee; and
 - (b) does not include a person on a vocational placement.

Note: Subsections 30E(1) and 30P(1) extend the meaning of *employee* in relation to a referring State.

- (2) A reference in this Act to an employer with its ordinary meaning includes a reference to a person who is usually such an employer.

Note: Subsections 30E(2) and 30P(2) extend the meaning of *employer* in relation to a referring State.