

1995—No. 372

**BUILDING AND CONSTRUCTION INDUSTRY LONG
SERVICE PAYMENTS ACT 1986—REGULATION**

(Building and Construction Industry Long Service Payments Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Building and Construction Industry Long Service Payments Act 1986, has been pleased to make the Regulation set forth hereunder.

JEFFREY SHAW, QC., M.L.C.,
Minister for Industrial Relations.

Citation

1. This Regulation may be cited as the Building and Construction Industry Long Service Payments Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definition

3. In this Regulation:

“**the Act**” means the Building and Construction Industry Long Service Payments Act 1986.

Prescribed awards (s. 3 (1))

4. (1) For the purposes of paragraph (a) (i) and (ii) of the definition of “building and construction work” in section 3 (1) of the Act, the prescribed awards are as follows:

Awards made (or taken to be made) under the Industrial Relations Act 1991

Building and Construction Industry Labourers' On Site (State) Award
 Building Crane Drivers (State) Award published 9 March 1977
 Building Tradesmen (State) Construction Award published 16 July 1975
 Gangers (State) Award published 29 January 1975
 General Construction and Maintenance, Civil and Mechanical Engineering &c. (State) Award published 21 December 1977
 The Joiners (State) Award published 17 November 1982
 Electricians &c. (State) Award published 3 February 1982
 Plumbers and Gasfitters (State) Award published 11 July 1984
 Plant, &c., Operators on Construction (State) Award
 Glass Workers (State) Award

Awards made (or taken to be made) under the Industrial Relations Act 1988 of the Commonwealth

National Building and Construction Industry Award 1990
 The Joiners (N.S.W.) Award
 Sprinkler Pipe Fitters Award (Federal)
 Plumbing Industry (New South Wales) Award 1983
 National Metal and Engineering On-Site Construction Industry Award 1989

(2) In the application of this clause to a registered worker:

- (a) the Glass Workers (State) Award; and
- (b) the National Metal and Engineering On-Site Construction Industry Award 1989,

are prescribed in respect of work in the building and construction industry performed on or after the date on which the person became a registered worker.

(3) A reference in this clause to an award is a reference to the award as in force on the commencement of this Regulation.

Prescribed costs (s. 21 (4) (c))

5. For the purposes of section 21 (4) (c) of the Act, the prescribed costs incurred by a registered worker in deriving the assessable income referred to in section 21 (4) (b) of the Act are those losses and outgoings which are allowable deductions (within the meaning of the Income Tax Assessment Act 1936 of the Commonwealth) from that assessable income.

Prescribed retiring age (s. 27 (1))

6. For the purposes of the definition of “prescribed retiring age” in section 27 (1) of the Act:

- (a) registered workers who have been granted pensions under section 38 of the Veterans’ Entitlements Act 1986 of the Commonwealth are a specified class; and
- (b) the prescribed retiring age in respect of such a worker is the age at which, under that Act, the worker became eligible to be granted such a pension.

Exemptions from levy (s. 34(2) (c))

7. (1) For the purposes of section 34 (2) (c) of the Act, a long service levy is not payable in respect of the erection of a building (within the meaning of Part 5 of the Act) if the cost of erecting the building is:

- (a) in the case of a building in respect of which the Corporation determines that work on its erection commenced before 1 November 1988—less than \$10,000; or
- (b) in any other case—less than \$50,000.

(2) For the purposes of section 34 (2) (c) of the Act, a long service levy is not payable in respect of the erection of a building (or a part of a building) if the Corporation is satisfied that:

- (a) the building is to be erected for a body constituted under any State or Commonwealth Act (other than the Royal Agricultural Society Act 1911 or an Act prescribed for the purposes of paragraph (a) of the definition of “worker” in section 3 (1) of the Act), or for the council of a local government area or for a county council; and
- (b) all the persons to be employed on site in erecting the building (or part of the building) will be persons employed under a contract of employment with that body or council.

(3) If:

- (a) a building is to be erected by or on behalf of a church or a non-profit organisation, or by an owner-builder; and
- (b) the building is to be erected wholly or partly by voluntary labour, or by the labour of the owner-builder; and
- (c) the Corporation so approves,

a long service levy is not, for the purposes of section 34 (2) (c) of the Act, payable in respect of the voluntary component of the erection of the building.

(4) In subclause (3):

“non-profit organisation” means:

- (a) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose; or
- (b) any other non-profit sporting or community organisation;

“owner-builder” means the holder of an owner-builder permit under the Building Services Corporation Act 1989;

“voluntary component”, in relation to the erection of a building, means that proportion of the cost of erecting the building that, in the opinion of the Corporation, the cost attributable to voluntary labour (or of the labour of the owner-builder) bears to the total cost of erecting the building, but not exceeding 50 per cent nor exceeding the percentage that will result in a long service levy of less than \$50.

Prescribed rate of long service levy (s. 35)

8. (1) For the purposes of section 35 of the Act, the prescribed rate is:

- (a) if the Corporation determines that work on the erection of the building commenced before 1 November 1988, 0.5 per cent; or
- (b) if the Corporation determines that work on the erection of the building commenced between 29 March 1993 and 30 June 1996 and if an exemption notice was in force on the date the Corporation determines that work commenced, zero; or
- (c) in any other case, 0.1 per cent.

(2) In this clause, **“exemption notice”** means a notice published in the Gazette by the Minister stating:

- (a) that an actuary has reported to the Corporation on the results of the actuary’s investigation to determine the sufficiency of the Fund; and
- (b) that the actuary has stated (pursuant to section 14 (4) of the Act) that in his or her opinion the rate of the long service levy should be reduced to zero for a period including the period specified in the notice.

(3) Any such notice remains in force for the period specified in the notice, but may be sooner revoked by further notice published in the Gazette.

(4) For the purposes of section 35 of the Act, the prescribed rate for an additional amount of the long service levy under section 41 of the Act (being an additional amount payable after 1 November 1988) is 0.1 per cent of the excess cost of erecting the building.

Prescribed amounts (ss. 41 (6) (b), 42 (5) (b), 43 (6) (b))

9. (1) For the purposes of section 41 (6) (b) of the Act, the prescribed amount is \$50,000.

(2) For the purposes of section 42 (5) (b) of the Act, the prescribed amount is:

- (a) in the case of a building in respect of which the Corporation determines that work on its erection commenced before 1 November 1988—\$10,000; or
- (b) in any other case—\$50,000

(3) For the purposes of section 43 (6) (b) of the Act, the prescribed amount is \$500,000.

Commencement of work

10. (1) This clause applies to determinations made by the Corporation in relation to clauses 7, 8 and 9 (2).

(2) The relevant events for the purpose of the Corporation's determination as to when work on the erection of a building commenced are:

- (a) the granting by a council of any approval required for the erection of the building:
 - (i) under Division 4 of Part 11 of the Local Government Act 1919 (in the case of an approval granted before 1 July 1993); or
 - (ii) under Part 1 of Chapter 7 of the Local Government Act 1993 (in the case of an approval granted on or after 1 July 1993); and
- (b) the signing of any contract entered into for the erection of the building; and
- (c) the commencement of work on the erection of at least part of the building, but only if the work was a genuine commencement of work on the erection of the building.

(3) The Corporation must not determine that work on the erection of a building commenced before 1 November 1988 unless the Corporation is satisfied that all the relevant events occurred before 1 November 1988.

(4) The Corporation must not determine that work on the erection of a building commenced between 1 November 1988 and 28 March 1993 unless the Corporation is satisfied that the relevant event described in subclause (2) (c) occurred between 1 November 1988 and 28 March 1993.

(5) The Corporation must not determine that work on the erection of a building commenced between 29 March 1993 and 30 June 1996 unless the Corporation is satisfied that the relevant event described in subclause (2) (c) occurred between 29 March 1993 and 30 June 1996.

Certification as to payment of levy (s. 45)

11. For the purposes of section 45 of the Act, the following offices or positions in the staff of the Corporation are prescribed offices or positions:

- Director
- Financial Controller

Certification as to levy due (s. 47 (5))

12. For the purposes of section 47 (5) of the Act, the persons holding the following offices in the staff of the Corporation are prescribed officers:

- Director
- Financial Controller

Appeals to Committee (s. 54 (1) (b) and (2))

13. (1) For the purposes of section 54 (1) (b) of the Act, an appeal to the Committee is to be made within 42 days after the appellant is notified of the decision appealed against.

(2) For the purposes of section 54 (2) of the Act, an appeal to the Committee is, subject to section 52 of the Act, to be by way of a notice of appeal which is in a form approved by the Corporation and which:

- (a) specifies the decision or that part of the decision which is being appealed against; and
- (b) specifies the grounds of appeal; and
- (c) is accompanied by a statutory declaration verifying the particulars set out in the notice of appeal.

Employers' books, records and particulars (s. 56 (1))

14. For purposes of section 56 (1) of the Act, the prescribed books and records to be kept by an employer of a worker under a contract of employment and the particulars to be contained in those books and records are:

- (a) time sheets or attendance records disclosing the attendance at work of the worker; and

(b) books or records containing the following particulars (whether or not contained in the time sheets or attendance records):

- the name and address of the worker;
- in the case of a registered worker, the registration number of the worker;
- the kind of work performed by the worker;
- the award under which the worker is paid;
- the serial number of the certificate of service issued to the worker;
- the total number of days (rounded off to the nearest whole number) of building and construction work performed by the worker each week.

Subcontract worker's books and records (s. 56 (2))

15. For the purposes of section 56 (2) of the Act, the prescribed books and records to be kept by a subcontract worker and the particulars to be contained in those books and records are:

- (a) books and records containing copies of accounting, taxation and other records relating to any claim or proposed claim for service credits under section 21 of the Act; and
- (b) books and records containing copies of any claim for service credits made by the subcontract worker under that section.

Repeal and savings

16. (1) The Building and Construction Industry Long Service Payments Regulation 1986 (the “**1986 Regulation**”) is repealed.

(2) Any notice or determination duly made or given under the 1986 Regulation is taken to be a corresponding notice or determination under this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to repeal the Building and Construction Industry Long Service Payments Regulation 1986 and to replace it with this Regulation which is in substantially the same terms as the Regulation to be repealed.

In particular, this Regulation deals with the following matters:

- the circumstances in which a long service levy is not payable in respect of the erection of a building are prescribed (these include where the cost of erecting the building is less than \$50,000, or where the building is erected for a statutory body or a non-profit association)
- the rate of a long service levy is prescribed (based on the cost of erecting the building), which will be a nil rate for work commenced between 29 March 1993 and 30 June 1996
- the records to be kept by employers about their workers, and the particulars to be contained in those records, are prescribed.

This Regulation is made under the Building and Construction Industry Long Service Payments Act 1986, including sections 3 (1), 21, 27, 34, 35, 41—43, 45; 47, 54, 56 and 65.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
