



New South Wales

Building and Construction Industry Long Service Payments Regulation 2006

under the

**Building and Construction Industry Long Service Payments Act
1986**

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building and Construction Industry Long Service Payments Act 1986*.

JOHN DELLA BOSCA, M.L.C.,
Minister for Industrial Relations

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Building and Construction Industry Long Service Payments Regulation 2000* which is repealed on 1 September 2006 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with, amongst other things, the following matters:

- (a) the definition of standard pay,
- (b) the circumstances in which a registered worker does not accumulate a service credit,
- (c) the retirement age for certain workers,
- (d) the circumstances in which a long service levy is not payable in respect of the erection of a building (these include where the cost of erecting the building is less than \$25,000, or where the building is erected for a statutory body or a non-profit organisation),
- (e) the rates of long service levies based on the cost of erecting the building concerned,
- (f) the records to be kept by employers about their workers, and the particulars to be contained in those records.

This Regulation is made under the *Building and Construction Industry Long Service Payments Act 1986*, including sections 3 (1), 19 (1), 21 (4) (c), 24 (2A), 27 (1), 32A (5), 34 (2) (c), 35, 41 (6) (b), 42 (5) (b), 43 (6) (b), 45, 47 (5), 54 (1) (b) and (2), 56 (1) and (2) and 65 (the general regulation-making power).

2006 No 504

Building and Construction Industry Long Service Payments Regulation 2006

Contents

	Page
1 Name of Regulation	3
2 Commencement	3
3 Definition and notes	3
4 Prescribed awards	3
5 Standard pay	5
6 Non-service days—prescribed days to be disregarded	5
7 Prescribed costs	5
8 Prescribed adjustment of service period	6
9 Prescribed retiring age	6
10 Prescribed interval	6
11 Exemptions from levy	7
12 Prescribed rate of long service levy	8
13 Prescribed amounts	9
14 Commencement of work	10
15 Certification as to payment of levy	12
16 Certification as to levy due	12
17 Appeals to Committee	12
18 Employers' books, records and particulars	12
19 Subcontract workers' books and records	13
20 Savings provision	13

Building and Construction Industry Long Service Payments Regulation 2006

under the

Building and Construction Industry Long Service Payments Act 1986

1 Name of Regulation

This Regulation is the *Building and Construction Industry Long Service Payments Regulation 2006*.

2 Commencement

This Regulation commences on 1 September 2006.

Note. This Regulation replaces the *Building and Construction Industry Long Service Payments Regulation 2000* which is repealed on 1 September 2006 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition and notes

(1) In this Regulation:

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

(2) Notes in this Regulation do not form part of this Regulation.

4 Prescribed awards

(1) For the purposes of paragraphs (a) and (b) (ii) of the definition of **building and construction work** in section 3 (1) of the Act, the prescribed awards are:

(a) the following awards made (or taken to be made) under the *Industrial Relations Act 1996*:

- (i) Building and Construction Industry (State) Award,
- (ii) Building Crane Drivers (State) Award published 9 March 1977,
- (iii) Electrical Contracting Industry (State) Award 1992,
- (iv) Gangers (State) Award published 29 January 1975,
- (v) General Construction and Maintenance, Civil and Mechanical Engineering &c. (State) Award published 21 December 1977,
- (vi) Glass Workers (State) Award,

2006 No 504

Clause 4

Building and Construction Industry Long Service Payments Regulation 2006

- (vii) Plant, &c., Operators on Construction (State) Award,
- (viii) Plumbers and Gasfitters (State) Award published 11 July 1984,
- (ix) The Joiners (State) Award published 17 November 1982, and
- (b) the following Federal awards:
 - (i) Asphalt and Bitumen Industry (NSW and ACT) Award 1994,
 - (ii) National Building and Construction Industry Award 1990,
 - (iii) National Joinery and Building Trades Products Award 1993,
 - (iv) National Metal and Engineering On-Site Construction Industry Award 1989,
 - (v) Plumbing Industry (New South Wales) Award 1983,
 - (vi) Sprinkler Pipe Fitters Award (Federal).
- (2) In the application of this clause to a registered worker, the following awards 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:
 - (a) the Glass Workers (State) Award,
 - (b) the National Metal and Engineering On-Site Construction Industry Award 1989.
- (3) A reference in this clause to an award is a reference to the award as in force as at 1 September 1995.
- (4) Despite subclause (3), a reference in this clause to the following awards is a reference to those awards as in force as at 1 July 1998:
 - (a) Asphalt and Bitumen Industry (NSW and ACT) Award 1994,
 - (b) Electrical Contracting Industry (State) Award 1992,
 - (c) National Building and Construction Industry Award 1990,
 - (d) National Joinery and Building Trades Products Award 1993.
- (5) Despite subclause (3), a reference in this clause to the Building and Construction Industry (State) Award is a reference to that award as in force as at 31 August 2001.

5 Standard pay

For the purposes of the definition of *standard pay* in section 3 (1) of the Act, *standard pay* means the amount of ordinary pay that is payable at the rate applicable to the classification “carpenter and joiner” under the Building and Construction Industry (State) Award published in the Industrial Gazette on 31 August 2001 in respect of work on 5 working days during those hours in which ordinary pay is payable.

6 Non-service days—prescribed days to be disregarded

- (1) For the purposes of section 19 (1) of the Act, any day on which, because of a circumstance specified in subclause (2), a registered worker does not accumulate a service credit is prescribed as a day to be disregarded in calculations made under section 19 (1A) or (1B) of the Act in respect of the worker.
- (2) The circumstances are the following:
 - (a) the worker does not work because she is pregnant,
 - (b) the worker does not work because he or she is caring for another person and is in receipt of a Commonwealth carer allowance under the *Social Security Act 1991* of the Commonwealth,
 - (c) the worker is performing building and construction work in a State or Territory in which there is not in force a law that provides for making payments of long service benefits to persons engaged in the building and construction industry in that State or Territory,
 - (d) the worker is performing building and construction work as an employee of:
 - (i) the Crown, or
 - (ii) a county council (within the meaning of the *Local Government Act 1993*), or
 - (iii) a local council,under an arrangement that does not provide for making payments of long service benefits to the employee.

7 Prescribed costs

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 relating to materials and to contracts for labour and services that it is permissible to deduct, under the *Income Tax Assessment Act 1997* of the Commonwealth, from that assessable income.

2006 No 504

Clause 8

Building and Construction Industry Long Service Payments Regulation 2006

8 Prescribed adjustment of service period

For the purposes of section 24 (2A) of the Act, the prescribed adjustment of the period of service with which a worker may be credited in the register of workers kept under the Act is 220 days less the total number of days with which the worker is entitled to be credited in records of building and construction workers' service kept under one or more corresponding laws.

9 Prescribed retiring age

For the purposes of the definition of *prescribed retiring age* in section 27 (1) of the Act, the prescribed retiring age in respect of a worker who has been granted a pension under section 38 of the *Veterans' Entitlements Act 1986* of the Commonwealth is the age at which, under that Act, the worker became eligible to be granted that pension

10 Prescribed interval

- (1) For the purposes of section 32A (5) of the Act, the prescribed interval is:
 - (a) if the last recorded service of the worker is credited under the Act, the de-registration period of the State or Territory under which the worker seeks to claim service credits, or
 - (b) if the last recorded service of the worker is credited under a corresponding law—4 years.
- (2) In this clause, *de-registration period* means the period specified in the corresponding law which would either result in the worker being removed, or entitle the worker to be removed, from the building and construction workers' service record kept under that corresponding law for failing to accrue service credits.

11 Exemptions from levy

- (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 the case of a building in respect of which the Corporation determines that work on its erection commenced between 1 November 1988 and 30 June 1997—less than \$50,000, or
 - (c) in the case of a building in respect of which the Corporation determines that work on its erection commenced on or after 1 July 1997—less than \$25,000.
- (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 an Act prescribed for the purposes of paragraph (a) of the definition of *worker* in section 3 (1) of the Act) or for a local council or 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) 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:
 - (a) consent to the erection of the building is not required to be obtained under Part 3A, 4 or 5A of the *Environmental Planning and Assessment Act 1979*, and
 - (b) consent to the erection of the building is not required to be obtained under any other Act or regulation, and
 - (c) the erection of the building commenced on or after 1 May 2004.

2006 No 504

Clause 12

Building and Construction Industry Long Service Payments Regulation 2006

(4) 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.

(5) A church, a non-profit organisation or an owner-builder by whom or on whose behalf a long service levy has been paid is entitled to a refund of so much (if any) of the levy as was, because of subclause (3), not properly payable.

(6) In this clause:

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, religious or community organisation.

owner-builder means the holder of an owner-builder permit under the *Home Building 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% nor exceeding the percentage that will result in a long service levy of less than \$50.

12 Prescribed rate of long service levy

(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%, or
- (b) if the Corporation determines that work on the erection of the building commenced between 1 November 1988 and 28 March 1993—0.1%, or
- (c) if the Corporation determines that work on the erection of the building commenced between 29 March 1993 and 30 June 1997 and if an exemption notice was in force on the date the Corporation determines that work commenced—zero, or

- (d) if the Corporation determines that work on the erection of the building commenced between 1 July 1997 and 31 December 2005—0.2%, or
- (e) if the Corporation determines that work on the erection of the building commenced on or after 1 January 2006—0.35%.

(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.

Note. See the following Government Gazettes for exemption notices: GG No 30 of 26.3.1993, p 1429; GG No 170 of 16.12.1994, p 7499 and GG No 77 of 28.6.1996, p 3684.

(3) An exemption 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:

- (a) being an additional amount payable between 1 November 1988 and 28 March 1993—is 0.1% of the excess cost of erecting the building, or
- (b) being an additional amount payable between 29 March 1993 and 30 June 1997—is zero per cent of the excess cost of erecting the building, or
- (c) being an additional amount payable between 1 July 1997 and 31 December 2005—is 0.2% of the excess cost of erecting the building, or
- (d) being an additional amount payable on or after 1 January 2006—is 0.35% of the excess cost of erecting the building.

13 Prescribed amounts

- (1) For the purposes of section 41 (6) (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 between 1 November 1988 and 30 June 1997—\$50,000, or

2006 No 504

Clause 14

Building and Construction Industry Long Service Payments Regulation 2006

- (b) in the case of a building in respect of which the Corporation determines that work on its erection commenced on or after 1 July 1997—\$25,000.
- (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 between 1 November 1988 and 30 June 1997—\$50,000, or
 - (b) in the case of a building in respect of which the Corporation determines that work on its erection commenced on or after 1 July 1997—\$25,000.
- (3) For the purposes of section 43 (6) (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 between 1 November 1988 and 30 June 1997—\$500,000, or
 - (b) in the case of a building in respect of which the Corporation determines that work on its erection commenced on or after 1 July 1997—\$10,000,000.

14 Commencement of work

- (1) This clause applies to determinations made by the Corporation in relation to clauses 11, 12 and 13.
- (2) The Corporation must not determine that work on the erection of a building commenced before 1 November 1988 unless the Corporation is satisfied that each of the following occurred before 1 November 1988:
 - (a) in the case of a building the erection of which required approval under Division 4 of Part 11 of the *Local Government Act 1919*—the granting by a council of the approval required for the erection of the building,
 - (b) the signing of any contract entered into for the erection of the building,
 - (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 between 1 November 1988 and 28 March 1993 unless the Corporation is satisfied that work on the erection of at least part of the building commenced between those dates and that the work was a genuine commencement of work on the erection of the building.

2006 No 504

Building and Construction Industry Long Service Payments Regulation 2006 Clause 14

- (4) The Corporation must not determine that work on the erection of a building commenced between 29 March 1993 and 30 June 1997 unless the Corporation is satisfied that work on the erection of at least part of the building commenced between those dates and that the work was a genuine commencement of work on the erection of the building.
- (5) The Corporation must not determine that work on the erection of a building commenced between 1 July 1997 and 31 December 2005 unless the Corporation is satisfied that one of the following events occurred:
 - (a) in the case of a building the erection of which required approval under Part 1 of Chapter 7 of the *Local Government Act 1993*—there was lodged with the council, between 1 July 1997 and 31 December 2005, an application for the approval required for the erection of the building,
 - (b) in the case of a building referred to in section 34 (2) (b) of the Act as in force before 1 July 1998—a contract for the erection of the building was entered into between 1 July 1997 and 31 December 2005,
 - (c) there was lodged with the consent authority under the *Environmental Planning and Assessment Act 1979*, between 1 July 1997 and 31 December 2005, an application under that Act for the development consent or complying development certificate that would enable the erection of the building.
- (6) The Corporation must not determine that work on the erection of a building commenced on or after 1 January 2006 unless the Corporation is satisfied that one of the following events occurred:
 - (a) in the case of a building the erection of which required approval under Part 1 of Chapter 7 of the *Local Government Act 1993*—there was lodged with the council, on or after 1 January 2006, an application for the approval required for the erection of the building,
 - (b) in the case of a building referred to in section 34 (2) (b) of the Act as in force before 1 July 1998—a contract for the erection of the building was entered into on or after 1 January 2006,
 - (c) there was lodged with the consent authority under the *Environmental Planning and Assessment Act 1979*, on or after 1 January 2006, an application under that Act for the approval under Part 3A, the development consent or complying development certificate that would enable the erection of the building.

2006 No 504

Clause 15

Building and Construction Industry Long Service Payments Regulation 2006

15 Certification as to payment of levy

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:

- (a) Director,
- (b) Assistant Director (Support),
- (c) Finance Manager.

16 Certification as to levy due

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:

- (a) Director,
- (b) Assistant Director (Support),
- (c) Finance Manager.

17 Appeals to Committee

- (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.

18 Employers' books, records and particulars

For the 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):
 - (i) the name and address of the worker,
 - (ii) the registration number of the worker,
 - (iii) the kind of work performed by the worker,
 - (iv) the award under which the worker is paid,

- (v) the serial number of the certificate of service issued to the worker,
- (vi) the total number of days (rounded off to the nearest whole number) of building and construction work performed by the worker each week.

19 Subcontract workers' books and records

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.

20 Savings provision

Any notice or determination duly made or given under the *Building and Construction Industry Long Service Payments Regulation 2000* is taken to be a corresponding notice or determination under this Regulation.