



New South Wales

# Building and Construction Industry Long Service Payments Regulation 2022

under the

Building and Construction Industry Long Service Payments Act 1986

His Honour the Administrator, with the advice of the Executive Council, has made the following Regulation under the *Building and Construction Industry Long Service Payments Act 1986*.

VICTOR DOMINELLO, MP  
Minister for Fair Trading

## Explanatory note

The object of the Regulation is to remake with amendments, the *Building and Construction Industry Long Service Payments Regulation 2017*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following matters—

- (a) the prescribed awards under the definitions of *building and construction work* and *Commonwealth industrial instrument*,
- (b) the definition of *standard pay*,
- (c) the circumstances in which a registered worker accumulates a service credit on a non-service day,
- (d) the prescribed costs incurred by a registered worker in deriving assessable income when claiming a service credit,
- (e) the prescribed adjustment of a service period,
- (f) the retirement age for certain workers,
- (g) the prescribed interval of maximum absence from service in applications for long service benefits,
- (h) the circumstances in which a long service levy is not payable and the rates of long service levies,
- (i) appeals to the Building and Construction Industry Long Service Payments Committee,
- (j) the records required to be kept by employers about their workers,
- (k) the service of documents by electronic message using a web portal.

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## Building and Construction Industry Long Service Payments Regulation 2022

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### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Building and Construction Industry Long Service Payments Regulation 2022*.

#### 2 Commencement

This Regulation commences on 1 September 2022.

**Note—** This Regulation replaces the *Building and Construction Industry Long Service Payments Regulation 2017*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this Regulation—

**county council** has the same meaning as in the *Local Government Act 1993*.

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

**Note—** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

## Part 2 Workers, service credits and long service payments

### 4 Awards—the Act, s 3, definition of “building and construction work”

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

- (a) the following modern awards made under the *Fair Work Act 2009* of the Commonwealth—
  - (i) *Asphalt Industry Award 2020* [MA000054],
  - (ii) *Building and Construction General On-site Award 2020* [MA000020],
  - (iii) *Electrical, Electronic and Communications Contracting Award 2020* [MA000025],
  - (iv) *Electrical Power Industry Award 2020* [MA000088],
  - (v) *Joinery and Building Trades Award 2020* [MA000029],
  - (vi) *Mobile Crane Hiring Award 2020* [MA000032],
  - (vii) *Plumbing and Fire Sprinklers Award 2020* [MA000036], and
- (b) the *Manufacturing and Associated Industries and Occupations Award 2020* [MA000010] for performance of work as a carpet layer, and
- (c) the following awards made, or taken to be made, under the *Industrial Relations Act 1996*, for contracts entered into before 28 November 2011—
  - (i) *Building and Construction Industry (State) Award* published 31 August 2001,
  - (ii) *Building Crane Drivers (State) Award* published 22 April 2005,
  - (iii) *Electrical, Electronic and Communications Contracting Industry (State) Award* published 28 November 2008,
  - (iv) *Gangers (State) Award* published 25 January 2002,
  - (v) *General Construction and Maintenance, Civil and Mechanical Engineering &c. (State) Award* published 24 March 2006,
  - (vi) *Glass Workers (State) Award* published 20 April 2001,
  - (vii) *Joiners (State) Award* published 23 May 2003,
  - (viii) *Plant, &c., Operators on Construction (State) Award* published 16 November 2001,
  - (ix) *Plumbers and Gasfitters (State) Award* published 25 February 2000.

### 5 Commonwealth industrial instruments—the Act, s 3

For the Act, section 3(1), definition of *Commonwealth industrial instrument*, the following are prescribed—

- (a) a modern award within the meaning of the *Fair Work Act 2009* of the Commonwealth,
- (b) an enterprise agreement within the meaning of the *Fair Work Act 2009* of the Commonwealth,
- (c) a Division 2B State instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth, Schedule 3A,
- (d) an instrument given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth, Schedule 3.

## 6 Standard pay—the Act, s 3

- (1) For the Act, section 3(1), definition of *standard pay*, paragraph (b), the amount of pay prescribed is the amount of ordinary pay payable, at the rate applying from time to time, to a carpenter and joiner of the relevant classification for 5 working days during the hours in which ordinary pay is payable.
- (2) In this section—  
*relevant classification* means Level 3 (CW/ECW 3) under the *Building and Construction General On-site Award 2020* [MA000020].

## 7 Non-service days—the Act, s 19

- (1) For the Act, section 19(1), the following days are prescribed—
  - (a) a day a worker does not work because the worker is pregnant or has a pregnancy-related condition,
  - (b) a day a worker does not work because the worker is caring for another person, if the worker receives a Commonwealth carer allowance under the *Social Security Act 1991* of the Commonwealth in relation to the other person,
  - (c) a day on which a worker performs building and construction work as an employee of the Crown, a local council or county council under an arrangement that does not provide for payment of long service benefits to the worker,
  - (d) a day on which a worker does not work because the worker is suffering from personal illness or injury,
  - (e) a day on which a worker does not work because a member of the worker's immediate family or household has—
    - (i) a serious illness, or
    - (ii) a serious injury, or
    - (iii) died.
- (2) In this section—  
*immediate family* has the same meaning as in the *Fair Work Act 2009* of the Commonwealth.

**Note—** The Act, section 19(1) provides that a non-service day means a day for which the worker did not accumulate a service credit and is used in calculations under the Act, section 19(1A) and (1B).

## 8 Costs for service credits claims—the Act, s 21

For the Act, section 21(4)(c), the prescribed costs are losses and outgoings that—

- (a) relate to materials and contracts for labour and services, and
- (b) are permissible to deduct, under the *Income Tax Assessment Act 1997* of the Commonwealth, from the assessable income.

## 9 Adjustment of service period for service credits claims—the Act, s 24

- (1) For the Act, section 24(2A), the worker's period of service must be adjusted to 220 days, less the number of days the worker is entitled to be credited in relevant records.
- (2) In this section—  
*relevant records* means records of building and construction workers' service kept under a corresponding law.

**10 Retiring age for worker receiving pension—the Act, s 27**

For the Act, section 27(1), definition of *prescribed retiring age*, paragraph (b), the prescribed retiring age for a worker is the age at which the worker becomes eligible to receive a pension under the *Veterans' Entitlements Act 1986* of the Commonwealth, section 37 or 38.

**11 Interval between periods of service for entitlement to long service payments in reciprocating State or Territory—the Act, s 32A**

- (1) For the Act, section 32A(5), the prescribed interval is—
- (a) if the last recorded service of the worker is credited under the Act—the deregistration 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 section—
- deregistration period* means the period specified in a corresponding law that would result in one of the following because a worker failed to accrue service credits—
- (a) the worker being removed from the building and construction workers' service record kept under the corresponding law,
  - (b) the worker being entitled to be removed from the building and construction workers' service record kept under the corresponding law.

## Part 3 Long service levies

### 12 Exemptions from levy—the Act, ss 34 and 42(1A)

- (1) For the Act, section 34(2)(c), a long service levy is not payable in relation to the following—
  - (a) the erection of a building if the cost of erecting the building is less than—
    - (i) until 31 December 2022—\$25,000, or
    - (ii) from 1 January 2023—\$250,000,
  - (b) the erection of a building if the Corporation is satisfied—
    - (i) the building will be erected for—
      - (A) a body constituted under a State or Commonwealth Act, other than an Act prescribed for the Act, section 3(1), definition of **worker**, paragraph (a), or
      - (B) a local council, or
      - (C) a county council, and
    - (ii) all workers working on the site are employed under a contract of employment with the body or council,
  - (c) the erection of a building if an environmental planning instrument provides the building may be erected as exempt development or development that does not otherwise require development consent under the *Environmental Planning and Assessment Act 1979*,
  - (d) the voluntary component of the erection of a building if the Corporation is satisfied the building will be erected—
    - (i) by or on behalf of a relevant person, or
    - (ii) wholly or partly by voluntary labour.
- (2) A relevant person is entitled to a refund of the part of a long service levy paid by the relevant person that is not payable because of subsection (1)(d).
- (3) In this section—

**exempt development** has the same meaning as the *Environmental Planning and Assessment Act 1979*.

**owner-builder** means the holder of an owner-builder permit under the *Home Building Act 1989*.

**relevant person** means the following—
  - (a) a church,
  - (b) a non-profit organisation,
  - (c) an owner-builder.

**voluntary component**, in relation to the erection of a building, means the part, not exceeding 50% of the cost of erecting the building that, in the opinion of the Corporation, is equivalent to the amount of voluntary labour involved in erecting the building.

**voluntary labour** includes the labour of an owner-builder.

### 13 Exemptions from levy—bushfire relief—the Act, ss 34 and 42(1A)

- (1) This section applies to the erection of a building, to replace or repair a building destroyed or damaged as a result of bushfire in the period starting 1 July 2019 and ending 2 March 2020.
- (2) This section does not apply to the erection of a building by or on behalf of the Crown.

- (3) For the Act, section 34(2)(c), a long service levy is not payable in relation to the first \$1,000,000 of the cost of erecting a building.
- (4) Subsection (3) applies only if the person—
  - (a) is liable to pay the long service levy under the Act, section 37, and
  - (b) has made a written application to the Corporation for an exemption before—
    - (i) 2 March 2023, or
    - (ii) a later date approved by the Corporation.
- (5) A person is entitled to a refund of the part of a long service levy paid by the person that is not payable because of this section.

**14 Prescribed rates for long service levy—the Act, s 35**

For the Act, section 35, the prescribed rate for a long service levy payable for a building is—

- (a) until 31 December 2022—0.35% of the cost of erecting the building, or
- (b) from 1 January 2023—0.25% of the cost of erecting the building.

**Note—** The prescribed rate for an additional amount of the long service levy under the Act, section 41(3), is also calculated at this rate.

**15 Prescribed amounts—the Act, ss 41–43**

- (1) For the Act, sections 41(6)(b) and 42(5)(b), the prescribed amount is \$25,000.
- (2) For the Act, section 43(6)(b), the prescribed amount is \$10,000,000.

**16 Certification of levy payment—the Act, ss 45 and 47(5)**

For the Act, sections 45 and 47(5), the office or position of Director of the Corporation is prescribed.

**17 Interest rate on overdue long service levy—the Act, s 46**

For the Act, section 46(4)(b), the prescribed rate is the rate 6% above the cash rate last published by the Reserve Bank of Australia—

- (a) for interest accrued between 1 January and 30 June—immediately before 1 January, and
- (b) for interest accrued between 1 July and 31 December—immediately before 1 July.



## Part 4 Appeals to Committee

### 18 Definitions

In this Part—

*Chairperson* has the same meaning as in the Act, Schedule 1.

*Committee Secretary* means the person, whether or not a member of the Committee, nominated by the Chairperson of the Committee to send and receive correspondence on behalf of the Committee.

### 19 Period for making appeal—the Act, s 54

- (1) For the Act, section 54(1)(b), the prescribed period is 42 days after the appellant is notified of the decision appealed against.
- (2) If the Chairperson of the Committee is satisfied exceptional circumstances exist, an appeal may be made up to 6 months after the appellant is notified of the decision appealed against.

### 20 Making an appeal—the Act, s 54

- (1) For the Act, section 54(2), an appeal to the Committee must be made by lodging with the Committee Secretary a notice of appeal in the form approved by the Committee.
- (2) A notice of appeal must contain the following information—
  - (a) the decision, or the part of the decision being appealed,
  - (b) the grounds of appeal,
  - (c) the contact details of the appellant and, if the appellant has engaged a legal representative, the contact details of the legal representative,
  - (d) whether the appellant intends to make oral submissions to the Committee in relation to the appeal and, if so, whether the appellant intends to make the submissions—
    - (i) in person or by audio visual link, and
    - (ii) with or without a legal representative,
  - (e) other information required by the Committee.
- (3) Correspondence, submissions and other documents in connection with an appeal, including a notice of the withdrawal of an appeal, must be lodged—
  - (a) with the Committee Secretary, and
  - (b) if the Committee specifies a period for the lodging of material—within the period.

### 21 Determination of appeal—the Act, s 54(2)

- (1) If the appellant has not indicated an intention to make oral submissions in the notice of appeal, the Committee may—
  - (a) determine the appeal based on the notice of appeal and written submissions from the Corporation or the appellant, or
  - (b) request further information from the appellant in relation to the appeal and consider information provided in determining the appeal.
- (2) If the Committee requests further information from the appellant, the appellant may indicate an intention to make oral submissions in relation to the appeal, either—
  - (a) in person or by audio visual link, and
  - (b) with or without a legal representative.

- (3) If the appellant indicates an intention to make oral submissions in relation to the appeal, in the notice of appeal or following a request from the Committee for further information, the Committee Secretary is, in consultation with the Chairperson of the Committee, to determine a date and place for the hearing of the appeal.
- (4) At the hearing of an appeal, the appellant and the appellant's legal representative, if any, may—
  - (a) address the Committee on matters relating to the appeal, and
  - (b) with the approval of the Committee, produce documents, records or information relating to the appeal.
- (5) The parties to an appeal, and their legal representative, may not call a person to give evidence, or to cross examine a person, at the hearing of the appeal.
- (6) The Committee may adjourn the hearing of an appeal to a later date if the Committee considers it necessary to enable the Committee to consider oral submissions made or documents, records or information produced, at the hearing.
- (7) The Committee Secretary must give the appellant and the Corporation written notice of the Committee's decision on an appeal as soon as practicable after the decision is made.

## Part 5 Miscellaneous

### 22 Employers' books, records and particulars—the Act, s 56

- (1) For the Act, section 56(1), the following books, records and particulars are prescribed—
  - (a) time sheets or attendance records for the worker,
  - (b) books or records containing the following particulars, whether or not contained in the time sheets or attendance records—
    - (i) the name, address and e-mail 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) details of payments to the worker under the *Long Service Leave Act 1955*,
    - (vi) the total number of days each week the worker performed building and construction work for more than half the worker's ordinary work day,
    - (vii) the payslips of the worker and PAYG payment summary statements for the worker.
- (2) If a book or record required to be kept under this section is in electronic form, the book or record must be able to be produced in written form.

### 23 Subcontract workers' books and records—the Act, s 56

- (1) For the Act, section 56(2), books and records containing copies of the following are prescribed—
  - (a) financial records relating to claims and proposed claims for service credits made under the Act, section 21,
  - (b) claims for service credits made under the Act, section 21.
- (2) If a book or record required to be kept under this section is in electronic form, the book or record must be able to be produced in written form.

### 24 Service of documents—the Act, s 57

For the Act, section 57(1)(f), a document may be served on a person by electronic message using a web portal if the person consents to the service of documents using the web portal.

### 25 Saving

An act, matter or thing that, immediately before the repeal of the *Building and Construction Industry Long Service Payments Regulation 2017*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 Penalty notice offences—the Act, s 64A**

### **1 Application of Schedule**

- (1) For the Act, section 64A—
  - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
  - (a) the limited kind of offence, or
  - (b) an offence committed in the limited circumstances.

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Penalty</b>
<b>Offences under the Act</b>	
Section 16A	\$200
Section 20(1)	\$200
Section 31A	\$200
Section 39	\$500
Section 41(2)	\$200
Section 41(4)	\$500
Section 56(3)	\$200