

1995—No. 473

EMPLOYMENT PROTECTION ACT 1982—REGULATION

(Employment Protection 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 Employment Protection Act 1982, has been pleased to make the Regulation set forth hereunder.

J. W. SHAW
Minister for Industrial Relations.

Citation

1. This Regulation may be cited as the Employment Protection Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definition

3. In this Regulation:

“the Act” means the Employment Protection Act 1982.

Non-application of s. 7—employee trial period

4. (1) This clause applies to an employee who is, under the terms of the employee’s engagement as notified to the employee at the time of engagement, engaged on a trial basis for a specified period.

(2) Section 7 of the Act does not apply in relation to the termination or proposed termination of employment of any such employee:

- (a) if the specified period of engagement on a trial basis is 6 months or less—before or within 7 days after, the expiration of that period; or
- (b) in any other case—before the expiration of a period of 6 months after the commencement of the employment.

Non-application of s. 7—employee engaged for less than 12 months

5. Section 7 of the Act does not apply in relation to the proposed termination of employment of an employee unless, at the time of termination of that employment, the employee has been, or will have been, continuously employed by the employer for at least 12 months ending at that time.

Non-application of ss. 7 and 8—where Commission’s order applies

6. (1) Sections 7 and 8 of the Act do not apply in relation to the termination or proposed termination of employment of an employee to whom subclause (2) applies.

(2) If the Commission has made an order under the Act in consequence of a report under section 11 of the Act so as to apply to and in relation to:

- (a) all or any of the employees to whom the report relates; and
- (b) such other employees of the employer concerned as may subsequently have their employment terminated by the employer and as are specified or described in the order (as referred to in section 14 (2) (a) (ii) of the Act),

this subclause applies to the employees referred to in paragraph (b) to the extent that the order applies to and in relation to them.

Non-application of ss. 7 and 8—business transmitted to another employer

7. (1) If:

- (a) a business, undertaking or establishment or any part of it is, or is to be, transmitted from an employer (“the transmitter”) to another employer (“the transmittee”); and
- (b) a person who at the time of the transmission is an employee of the transmitter in that business, undertaking, establishment or part of it becomes, or is to become, an employee of the transmittee,

sections 7 and 8 of the Act do not apply in relation to the termination or proposed termination of the employment of that person with the transmitter.

(2) In this clause, “**transmission**”, without limiting its ordinary meaning, includes transfer, conveyance, assignment or succession, whether by agreement or operation of law.

Non-application of ss. 7 and 8—employee not covered by an award or agreement

8. Sections 7 and 8 of the Act do not apply in relation to the termination or proposed termination of employment of an employee to whom no award or agreement applies.

Non-application of ss. 7 and 8—where employee paid severance pay at prescribed rate

9. Sections 7 and 8 of the Act do not apply in relation to the termination or proposed termination of employment of an employee who is paid, at or before the time of termination, a severance payment in respect of that termination the amount of which is at least equal to an amount calculated at the rate applicable in respect of the employee under the scale set out in Schedule 1.

Non-application of ss. 7 and 8—other cases

10. Sections 7 and 8 of the Act do not apply in relation to the termination or proposed termination of employment of

- (a) an employee whose employment is covered by an award or agreement that makes provision for the making of a severance payment to the employee in consequence of that termination or proposed termination of employment; or
- (b) an employee:
 - (i) who, under the terms of the employee’s engagement as notified to the employee at the time of his or her engagement, is engaged for a specified period of time or for a specified task; and
 - (ii) whose employment is not terminated before the expiry of that period or the completion of the specified task.

Notice under s. 7 to be in duplicate

11. An employer must serve any notice of intention to terminate the employment of an employee required by section 7 of the Act in duplicate or such other number as the Registrar directs and notifies to the employer.

Maximum penalty: 0.5 penalty unit.

Notice under s. 7 or 8

12. (1) A notice under section 7 or 8 of the Act must be in the form set out in Form 1 in Schedule 2.

(2) An employer who serves a notice under section 7 or 8 of the Act that is not in the form set out in Form 1 is guilty of an offence.

Maximum penalty: 0.5 penalty unit.

(3) For the purposes of section 7 (2) (h) of the Act, the matters:

(a) of which particulars are required for completion of Form 1 in Schedule 2; and

(b) which are not specified in section 7 (2) (a)–(g) of the Act,

are prescribed.

(4) A notice is taken not to have been served for the purposes of section 8 (1) of the Act unless it contains the particulars required for completion of Form 1 in Schedule 2.

Further particulars in relation to notice under S. 7 or 8

13. (1) If the Commission is of the opinion that, for the purposes of any proceedings under the Act, it is necessary or desirable that any particulars contained in a notice under section 7 or 8 of the Act (whether served on the Registrar before or after the commencement of this Regulation) be clarified, it may direct the Registrar to require those particulars to be clarified in such manner and within such time as it may specify. The Registrar is, by notice in writing served on the employer who served the notice, to make that requirement known to the employer.

(2) An employer who refuses or fails to comply with a requirement specified in a notice served on the employer under subclause (1) is guilty of an offence.

Maximum penalty: 0.5 penalty unit.

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14. For the purposes of section 12 (1A) of the Act, the prescribed form is Form 2 in Schedule 2.

Repeal and savings

15. (1) The Employment Protection Regulation 1983 (the “**1983 Regulation**”) is repealed.

(2) Any act or other thing done, including any notice duly served, in accordance with a provision of the 1983 Regulation is taken to be an act or thing done under the corresponding provision of this Regulation.

SCHEDULE 1—SCALE OF SEVERANCE PAYMENTS

(Cl. 9)

Length of continuous service by employee.	Rate for calculation of amount of severance payment.	
	If employee under 45 years of age.	If employee 45 or more years of age.
Less than 1 year	Nil.	Nil.
1 year and more but less than 2 years	4 weeks' pay	5 weeks' pay
2 years and more but less than 3 years	7 weeks' pay	8.75 weeks' pay
3 years and more but less than 4 years	10 weeks' pay	12.5 weeks' pay
4 years and more but less than 5 years	12 weeks' pay	15 weeks' pay
5 years and more but less than 6 years	14 weeks' pay	17.5 weeks' pay
6 years and more	16 weeks' pay	20 weeks' pay

SCHEDULE 2—FORMS

Form 1

(Cl. 12)

Employment Protection Act 1982

NOTICE TO INDUSTRIAL REGISTRAR

To be lodged at: The Office of the Industrial Registrar, Sydney.

Important notes concerning this Form.

- A. This form is to be used in giving the notice required under either s. 7 or s. 8 of the Employment Protection Act 1982.
- B. All questions **MUST** be answered.
- C. Time for serving notices:
 - (i) *Notices under s. 7*—the Notice (together with the prescribed number of copies) should be served on the Industrial Registrar at least 7 days before notice of termination of employment is given to the employee concerned, or (if notice of termination is not being given to the employee) at least 7 days before the termination of employment.
 - (ii) *Notices under s. 8*—the Notice should be served on the Industrial Registrar *not later than 7 days* after the employee is given notice of termination (where notice is given), or not later than 7 days after the date of termination (if employment was terminated without notice).
- D. Number of copies required:
 - (i) *Notices under s. 7*—the Notice should be served **IN DUPLICATE** or such other number of copies as the Registrar directs.
 - (ii) *Notices under s. 8*—only one copy need be served.
- E. Form should be typewritten or block letters used.

QUESTIONS

- 1. Is this Notice given under section 7 or section 8 of the Employment Protection Act 1982? (State which s.....)

Details of employer:

- 2. Employer's full name and address:

Name (for sole employer or partnership give surname(s) and other name(s), for registered company give full registered title):

.....

Trading name (if any):

Full address:

..... Postcode Telephone
- 3. Nature of employer's business or industry

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4. Are there particulars of the employer's financial and other resources which the employer desires the Commission to have regard to before making an order under Act:

YES NO

If yes: Note that under s. 14 (5) the Commission will take into account such financial or other resources of an employer as the employer discloses to it, either in this Notice or otherwise. Particulars may be disclosed by attaching the details as part of this Notice (see s. 7 (2A)) or they may be disclosed to the Commission later, either in writing or in proceedings before the Commission. Where an employer claims that such details should be treated as confidential, the particulars should be disclosed later and, if in writing, forwarded to the Industrial Registrar in a sealed envelope marked "CONFIDENTIAL" with a covering letter, referring to this Notice, and setting out briefly why confidentiality is sought.

5. Is the employer a member of an industrial union of employers? YES NO

Name:

Details of employee:

6. Employee's full name and address:

 Postcode Telephone
7. Age of employee: Under 45 45 and over Date of birth:/...../19....
8. Employee is employed as: Adult Junior Apprentice
9. Is the employee: full time part time casual other (specify)
10. Is the employee a member of a relevant union: YES NO NOT KNOWN If yes, name of union

Employment details:

11. Date on which employee' last entered employment/...../19.....
12. Date on or after which termination of employment effective /..... /19.....
13. Period of service: years months
14. Work location (address)
15. Is the employee covered by a STATE Award/Formal Industrial Agreement/Enterprise Agreement:
 YES NO
- IF COVERED BY STATE AWARD/FORMAL INDUSTRIAL AGREEMENT/
 ENTERPRISE AGREEMENT:
- (a) Name or Number
- (b) Award/Formal Industrial Agreement/Enterprise Agreement
 classification

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- (c) Position occupied or duties performed
- (d) Ordinary time weekly Award/Former Industrial Agreement/Enterprise Agreement rate of pay:
\$

IF NO AWARD OR AGREEMENT APPLICABLE:

- (a) Position occupied or duties performed
- (b) Ordinary rate of pay: \$ per week.
- 16. Particulars of reason or reasons for termination of employment (if space insufficient attach full explanation):
.....
.....
- 17. Period of any notice given to employee: weeks.

Payments made in consequence of termination:

- 18. Give particulars of all payments made/to be made to the employee in consequence of the termination of his or her employment. (Where known, give amount to the nearest dollar. If not known, give the basis for calculation of the amount.)
Wages (including allowances, etc.) \$
Holiday pay \$
Long Service Leave \$
Pay in lieu of notice \$
Severance/termination pay \$ on the following formula.....
.....
Superannuation—per Trust Deed \$.....
Superannuation—supplement by employer \$
Other (give details) \$

19. IS AN ORDER FOR PAYMENT OF SEVERANCE PAY CONTESTED on any grounds?

YES NO

If YES, briefly set out the grounds relied on. (If space insufficient attach separate sheet)

.....
.....
.....

Date:/...../.....

Signed:
for/on behalf of Employer.

Lodged by:

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Form 2

(Section 12 (1A), clause 14)

NOTICE BY UNION OR EMPLOYER TO THE COMMISSION

PURSUANT to the provisions of section 12 (1A) of the Employment Protection Act 1982—

We hereby request the Commission to exercise its jurisdiction under the Act in relation to the Registrar’s report relating to the *intended termination/reasons for termination of employment of.....

.....
Dated this day of 19 .

.....
(Signature of Applicant)

.....
(Address of Applicant)

To the President of the Commission.

* Delete whichever inapplicable.



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SCHEDULE 1—SCALE OF SEVERANCE PAYMENTS

SCHEDULE 2—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal the Employment Protection Regulation 1983 and to replace it with this Regulation which is in substantially the same terms as the Regulation to be repealed.

In particular, this Regulation:

- prescribes the classes of cases in which sections 7 and 8 of the Employment Protection Act 1982 do not apply (those sections require an employer to notify the Industrial Registrar of the employer's intention to terminate the employment of an employee and of the reasons for the termination, and the classes of cases include where the employee has been employed for less than 12 months, is not covered by an award or agreement or is paid severance pay at the rate set out in Schedule 1 to the Regulation)
- prescribes the form of the notices required to be given under the Act.

This Regulation is made under the Employment Protection Act 1982, including sections 7, 8, 12 and 24.

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