



New South Wales

# Employment Protection Regulation 2001

under the

Employment Protection Act 1982

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Employment Protection Act 1982*.

JOHN DELLA BOSCA, M.L.C.,

Minister for Industrial Relations

## Explanatory note

The object of this Regulation is to remake, without substantial alteration, the *Employment Protection Regulation 1995*. That Regulation will be repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*.

Part 1 of this Regulation contains formal provisions.

Part 2 of 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.) The classes of cases include those of the following:

- (a) employees who have been employed by the employer for less than 12 months,
- (b) employees who are not covered by an award or agreement,
- (c) employees who are paid severance pay at the rate set out in Schedule 1 to the Regulation.

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Explanatory note

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Part 3 of this Regulation deals with notices required to be given under the Act. That Part, with Schedule 2 to the Regulation, prescribes the form that those notices are to take. The Part also contains provisions relating to the number of copies of certain notices that are required and the provision of further particulars in connection with the notices.

Part 4 of this Regulation contains the following miscellaneous provisions:

- (a) a provision that, with Schedule 2, prescribes the form of a request for the exercise of certain jurisdiction under the Act,
- (b) a savings provision relating to the Regulation that this Regulation replaces.

This Regulation is made under the *Employment Protection Act 1982* and, in particular, under section 24 (the general regulation-making power) and the sections referred to in the Regulation.

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## Employment Protection Regulation 2001

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Employment Protection Regulation 2001*.

#### 2 Commencement

This Regulation commences on 1 September 2001.

**Note.** This Regulation replaces the *Employment Protection Regulation 1995* which is repealed on 1 September 2001 under section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definition

In this Regulation:

*the Act* means the *Employment Protection Act 1982*.

#### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

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Part 2                         Cases in which section 7 or 8 of the Act does not apply

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## **Part 2 Cases in which section 7 or 8 of the Act does not apply**

### **5 Non-application of section 7—employee trial period**

- (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.

### **6 Non-application of section 7—employee engaged for less than 12 months**

Section 7 of the Act does not apply in relation to the termination or 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.

### **7 Non-application of sections 7 and 8—where Commission's order applies**

- (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.

**8 Non-application of sections 7 and 8—business transmitted to another employer**

(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 transferee*), 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 transferee,

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 by operation of law.

**9 Non-application of sections 7 and 8—employee not covered by an award or agreement**

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.

**10 Non-application of sections 7 and 8—where employee paid severance pay at prescribed rate**

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.

**11 Non-application of sections 7 and 8—other cases**

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

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- (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.



## Part 3 Notices

### 12 Notice under section 7 to be in duplicate

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.

### 13 Notice under section 7 or 8

(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) that 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.

### 14 Further particulars in relation to notice under section 7 or 8

(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.

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- (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.

## **Part 4 Miscellaneous**

### **15 Request by union or employer for Commission to exercise jurisdiction**

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

### **16 Saving**

Any act, matter or thing that, immediately before the repeal of the *Employment Protection Regulation 1995*, had effect under that Regulation continues to have effect under this Regulation.

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Employment Protection Regulation 2001

Schedule 1      Scale of severance payments

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**Schedule 1    Scale of severance payments**

(Clause 10)

<b>Length of continuous service by employee</b>	<b>Rate for calculation of amount of severance payment</b>	
	<b>If employee under 45 years of age</b>	<b>If employee 45 or more years of age</b>
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 or more	16 weeks' pay	20 weeks' pay

## Schedule 2 Forms

(Clauses 13 and 15)

### Form 1 Notice to Industrial Registrar

(Employment Protection Act 1982, sections 7 and 8  
Employment Protection Regulation 2001, clause 13)

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

Important notes concerning this form

- (1) This form is to be used in giving the notice required under either section 7 or section 8 of the *Employment Protection Act 1982*.
- (2) All required information must be provided and all questions answered.
- (3) Time for serving notices:
  - (a) **Notices under section 7**—the Notice (together with the requisite 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.
  - (b) **Notices under section 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).
- (4) Number of copies required:
  - (a) **Notices under section 7**—the Notice should be served IN DUPLICATE or such other number of copies as the Industrial Registrar directs.
  - (b) **Notices under section 8**—only one copy need be served.
- (5) This form should be typewritten or block letters used.

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Schedule 2

Forms

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### Notice

#### Information required and questions to be answered

1 This Notice is given under \*section 7/section 8 of the *Employment Protection Act 1982*.

\* Delete whichever is inapplicable

#### *Details of employer*

2 Employer's full name and address:

Name (for sole employer or partnership give family name(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:

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 the Act?

YES [ ] NO [ ]

**Note.** If the answer is "yes", note that under section 14 (5) of the Act 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 section 7 (2A) of the Act) 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 [ ]

If the answer is "yes", name of union:

#### *Details of employee*

6 Employee's full name and address:

Postcode:

Telephone:

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- 7 Age of employee:  
Under 45  45 or over   
Date of birth:
- 8 Employee is employed as:  
Adult  Junior  Apprentice
- 9 Employee is employed:  
Full time  Part time  Casual  Other  (specify):
- 10 Is the employee a member of a relevant union?  
YES  NO  NOT KNOWN   
If the answer is "yes", name of union:

*Employment details*

- 11 Date on which employee last entered employment:
- 12 Date on or after which termination of employment effective:
- 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:  
(c) Position occupied or duties performed:  
(d) Ordinary time weekly Award/Formal Industrial Agreement/Enterprise Agreement rate of pay:  
\$

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Schedule 2      Forms

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**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 separate sheet):

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.)

\* Delete whichever is inapplicable

Wages (including allowances etc):

\$

Holiday pay:

\$

Long service leave:

\$



Pay in lieu of notice:

\$

Severance/termination pay:

\$

calculated according to 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 the answer is “yes”, briefly set out the grounds relied on (if space insufficient attach separate sheet):

Signed:

for/on behalf of Employer

Date:

Lodged by:

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Schedule 2

Forms

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**Form 2 Notice by union or employer to the Commission**

(Employment Protection Act 1982, section 12 (1A)

Employment Protection Regulation 2001, clause 15)

NOTICE BY UNION OR EMPLOYER TO THE COMMISSION

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

\*I/We (name/s) 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 (name/s)

Signature of applicant/s:

Address of applicant/s:

Date:

To: the President of the Commission

\* Delete whichever inapplicable

BY AUTHORITY

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