



New South Wales

Employment Protection Regulation 2017

under the

Employment Protection Act 1982

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

DOMINIC PERROTTET, MP
Minister for Industrial Relations

Explanatory note

The object of this Regulation is to remake, with minor amendments, the *Employment Protection Regulation 2001*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes provision for the following matters:

- (a) the cases in which section 7 or 8 of the *Employment Protection Act 1982* does not apply (those sections require an employer to notify the Industrial Registrar of an intention to terminate an employee or to give the Registrar reasons for a termination),
- (b) the requirements for giving notice under section 7 or 8 of the Act,
- (c) other formal and savings matters.

This Regulation is made under the *Employment Protection Act 1982*, including sections 7, 8, 12 and 24 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Employment Protection Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Employment Protection Regulation 2001*, which is repealed on 1 September 2017 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

termination of employment includes proposed termination of employment.

the Act means the *Employment Protection Act 1982*.

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

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

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

4 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 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.

5 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 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.

6 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 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 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.

7 Non-application of sections 7 and 8—severance payments

Sections 7 and 8 of the Act do not apply in relation to the termination of employment of:

- (a) an employee who is paid, at or before the time of termination, a severance payment that is at least equal to the amount calculated in accordance with the rate specified in Schedule 1 for that employee, or
- (b) an employee whose employment is covered by an award or agreement that provides for the making of a severance payment to the employee in respect of that termination.

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

Sections 7 and 8 of the Act do not apply in relation to the termination of employment of the following employees:

- (a) an employee to whom no award or agreement applies,
- (b) an employee to whom an order made by the Commission under the Act as a consequence of a report under section 11 of the Act applies,

- (c) an employee 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 whose employment is not terminated before the expiry of that period or the completion of the specified task.

Part 3 Notices

9 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.

10 Notice under section 7 or 8

(1) A notice under section 7 or 8 of the Act must contain the particulars specified in Form 1 in Schedule 2 and notice is taken not to have been served for the purposes of section 8 (1) of the Act unless it contains those particulars.

(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 in Schedule 2 is guilty of an offence.

Maximum penalty: 0.5 penalty unit.

11 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 be clarified, it may direct the Registrar to serve a written notice on the employer concerned requiring the employer to clarify the particulars in the manner and within the time specified in the notice.

(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

12 Request by union or employer for Commission to exercise jurisdiction

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

13 Savings

Any act, matter or thing that, immediately before the repeal of the *Employment Protection Regulation 2001*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Scale of severance payments

(Clause 7)

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 or more	16 weeks' pay	20 weeks' pay

Schedule 2 Forms

(Clauses 10 and 12)

Form 1 Notice to Industrial Registrar

(*Employment Protection Act 1982*, sections 7 and 8)

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

* Delete whichever is inapplicable.

Details of employer

Employer's full name, address and telephone number:

Name [*for sole employer or partnership give full names or for registered company give full registered title*]:

Trading name (if any):

Nature of employer's business or industry:

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.

Is the employer a member of an industrial union of employers? Yes No

If yes, name of union:

Details of employee

Employee's full name, address and telephone number:

Date of birth of employee:

Employee is employed as: Adult Junior Apprentice

Employee is employed: Full time Part time Casual Other [*specify*]

Is the employee a member of a relevant union? Yes No Not known

If yes, name of union:

Employment details

Date on which employee last entered employment:

Date on or after which termination of employment effective:

Period of service (in years and months):

Work address:

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 or Agreement classification:

(c) Position occupied or duties performed:

(d) Ordinary time weekly rate of pay under Award or Agreement:

If no award or agreement is applicable:

(a) Position occupied or duties performed:

(b) Ordinary weekly rate of pay:

Particulars of reason or reasons for termination of employment [*Attach a separate sheet if required*]:

Period of any notice given to employee:

Payments made in consequence of termination

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:

calculated according to the following formula:

Superannuation—per Trust Deed:

Superannuation—supplement by employer:

Other payments [*give details*]:

Is an order for payment of severance pay contested on any grounds? Yes No [*If yes, briefly set out the grounds relied on and attach a separate sheet if required*].

Signed:

for/on behalf of Employer

Date:

Lodged by:

Form 2 Notice by union or employer to the Commission

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

*I/We [*name*] request the Commission to exercise its jurisdiction under the Act in relation to the Industrial 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:

* Delete whichever is inapplicable