



New South Wales

Employment Protection Regulation 2022

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*.

DAMIEN TUDEHOPE, MLC
Minister for Employee Relations

Explanatory note

The object of this Regulation is to remake, with minor changes, the *Employment Protection Regulation 2017*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation makes provision for the following matters—

- (a) the cases in which the *Employment Protection Act 1982*, section 7 or 8 does not apply,
- (b) the requirements for giving notice under the Act, section 7 or 8,
- (c) other formal and savings matters.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) 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 2022*.

2 Commencement

This Regulation commences on 1 September 2022.

Note— This Regulation replaces the *Employment Protection Regulation 2017*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

3 Definitions

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.

Part 2 Cases in which obligations of employers do not apply—the Act, ss 7 and 8

4 Non-application of s 7—employee trial period

- (1) This section 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) The Act, section 7 does not apply in relation to the termination of employment of the employee—
 - (a) if the specified period of engagement on a trial basis is 6 months or less—before, or within 7 days after, the end of the period, or
 - (b) otherwise—until 6 months after the commencement of the employment.

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

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

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

- (1) This section applies if a business, undertaking or establishment or a part of it is, or is to be, transmitted from an employer (the *transmitter*) to another employer (the *transmittee*).
- (2) The Act, sections 7 and 8 do not apply in relation to the termination of a person's employment with the transmitter if—
 - (a) at the time of the transmission, the person is an employee of the transmitter in the business, undertaking, establishment or part of it, and
 - (b) the person becomes, or is to become, an employee of the transmittee.
- (3) In this section—
transmission includes transfer, conveyance, assignment or succession, whether by agreement or by operation of law.

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

The Act, sections 7 and 8 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 at least equal to the amount calculated in accordance with the rate specified in Schedule 1 for the 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 relation to the termination.

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

The Act, sections 7 and 8 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 the Act, section 11 applies,
- (c) an employee who, under the terms of the employee's engagement as notified to the employee at the time of the employee's engagement, is engaged for a

specified period of time or for a specified task, and whose employment is not terminated before the end of the period or the completion of the task.

Part 3 Miscellaneous

9 Notice under the Act, s 7 or 8

- (1) A notice under the Act, section 7 or 8 must contain the particulars specified in Schedule 2, Form 1.
- (2) A notice is taken not to have been served for the purposes of the Act, section 8(1) unless it contains the particulars.
- (3) An employer who serves a notice under the Act, section 7 or 8 that is not in the form set out in Schedule 2, Form 1 is guilty of an offence.
Maximum penalty—0.5 penalty unit.

10 Request by union or employer for Commission to exercise jurisdiction

Schedule 2, Form 2 is prescribed for the Act, section 12(1A).

11 Savings

An act, matter or thing that, immediately before the repeal of the *Employment Protection Regulation 2017*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Scale of severance payments

section 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

sections 9 and 10

Form 1 Notice to Industrial Registrar

Employment Protection Act 1982, sections 7 and 8

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

[* Delete whichever is inapplicable]

Details of employer

Employer's full name, address and telephone number—

[For sole employer or partnership give full names or for registered company give full registered title]

Business name, if any—

Nature of employer's business or industry—

Are there particulars of the employer's financial and other resources the employer desires the Commission to have regard to before making an order under the Act? Yes No

Note— If the answer is "yes", under the Act, section 14(5), the Commission will take into account the financial or other resources of an employer that 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 the Act, section 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 the 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/Former Industrial Agreement/Enterprise Agreement—

Yes No

If covered by State Award/Former 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 notice given to employee—

Payments made in consequence of termination

Give particulars of all payments made or to be made to the employee in consequence of the termination of the employee's employment. Where known, give the 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? 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].*

[Delete whichever is inapplicable]*

Signature of applicant/s—

Address of applicant/s—

Date—