



Building and Construction Industry Long Service Payments Regulation 2011

under the

Building and Construction Industry Long Service Payments Act
1986

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Building and Construction Industry Long Service Payments Act 1986*.

GREG PEARCE, MLC
Minister for Finance and Services

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Building and Construction Industry Long Service Payments Regulation 2006* which is repealed on 1 September 2011 by section 10 (2) of the *Subordinate Legislation Act 1989*. This Regulation deals with, among other things, the following matters:

- (a) the definition of standard pay,
- (b) the circumstances in which a registered worker does not accumulate a service credit,
- (c) the retirement age for certain workers,
- (d) the circumstances in which a long service levy is not payable in respect of the erection of a building (these include where the cost of erecting the building is less than \$25,000, or where the building is erected for a statutory body or a non-profit organisation),
- (e) the rates of long service levies based on the cost of erecting the building concerned,
- (f) the records to be kept by employers about their workers, and the particulars to be contained in those records.

This Regulation is made under the *Building and Construction Industry Long Service Payments Act 1986*, including the definitions of **building and construction work**, **Commonwealth industrial instrument** and **standard pay** in section 3 (1), and sections 19 (1), 21 (4) (c), 24 (2A), 27 (1), 32A (5), 34 (2) (c), 35, 41 (6) (b), 42 (5) (b), 43 (6) (b), 45, 47 (5), 54 (1) (b) and (2), 56 (1) and (2) and 65 (the general regulation-making power).

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Building and Construction Industry Long Service Payments Regulation 2011

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Building and Construction Industry Long Service Payments Act 1986

1 Name of Regulation

This Regulation is the *Building and Construction Industry Long Service Payments Regulation 2011*.

2 Commencement

This Regulation commences on 1 September 2011.

Note. This Regulation replaces the *Building and Construction Industry Long Service Payments Regulation 2006* which is repealed on 1 September 2011 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition and notes

(1) In this Regulation:

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

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

4 Prescribed awards

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

- (a) the following awards made (or taken to be made) under the *Industrial Relations Act 1996*:
 - (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,

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- (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, and
- (b) the following modern awards under the *Fair Work Act 2009* of the Commonwealth:
- (i) *Asphalt Industry Award 2010* [MA000054],
 - (ii) *Building and Construction General On-site Award 2010* [MA000020],
 - (iii) *Electrical, Electronic and Communications Contracting Award 2010* [MA000025],
 - (iv) *Joinery and Building Trades Award 2010* [MA000029],
 - (v) *Mobile Crane Hiring Award 2010* [MA000032],
 - (vi) *Plumbing and Fire Sprinklers Award 2010* [MA000036], and
- (c) the *Manufacturing and Associated Industries and Occupations Award 2010* [MA000010] as in force on 3 March 2011 (but only to the extent to which it relates to performance of work as a carpet layer).

5 Commonwealth industrial instruments

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

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

6 Standard pay

For the purposes of the definition of **standard pay** in section 3 (1) of the Act, **standard pay** means the amount of ordinary pay that is payable at the rate applicable from time to time to the classification “Level 3 (CW/ECW 3)” for a carpenter and joiner under the *Building and*

Construction General On-site Award 2010 [MA000020] in respect of work on 5 working days during those hours in which ordinary pay is payable.

7 Non-service days—prescribed days to be disregarded

- (1) For the purposes of section 19 (1) of the Act, any day on which, because of a circumstance specified in subclause (2), a registered worker does not accumulate a service credit is prescribed as a day to be disregarded in calculations made under section 19 (1A) or (1B) of the Act in respect of the worker.
- (2) The circumstances are the following:
 - (a) the worker does not work because she is pregnant,
 - (b) the worker does not work because he or she is caring for another person and is in receipt of a Commonwealth carer allowance under the *Social Security Act 1991* of the Commonwealth,
 - (c) the worker is performing building and construction work under an arrangement that does not provide for making payments of long service benefits to the employee and is performing that work as an employee of:
 - (i) the Crown, or
 - (ii) a county council (within the meaning of the *Local Government Act 1993*), or
 - (iii) a local council.

8 Prescribed costs

For the purposes of section 21 (4) (c) of the Act, the prescribed costs incurred by a registered worker in deriving the assessable income referred to in section 21 (4) (b) of the Act are those losses and outgoings relating to materials and to contracts for labour and services that it is permissible to deduct, under the *Income Tax Assessment Act 1997* of the Commonwealth, from that assessable income.

9 Prescribed adjustment of service period

For the purposes of section 24 (2A) of the Act, the prescribed adjustment of the period of service with which a worker may be credited in the register of workers kept under the Act is 220 days less the total number of days with which the worker is entitled to be credited in records of building and construction workers' service kept under one or more corresponding laws.

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10 Prescribed retiring age

For the purposes of the definition of *prescribed retiring age* in section 27 (1) of the Act, the prescribed retiring age in respect of a worker who has been granted a pension under section 38 of the *Veterans' Entitlements Act 1986* of the Commonwealth is the age at which, under that Act, the worker became eligible to be granted that pension.

11 Deemed minimum rates of pay under section 32B of the Act

For the purposes of the application of the formulae in sections 29 and 32 of the Act, if, on 1 January 2010, the rate of pay for work under a modern award was lower than the minimum rate of pay for similar work under the terms of a State award, the reference in the matter relating to P in those sections to the rate of pay is taken to be a reference to the minimum rate of pay under that State award on that date.

12 Prescribed interval

- (1) For the purposes of section 32A (5) of the Act, the prescribed interval is:
 - (a) if the last recorded service of the worker is credited under the Act, the de-registration 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 clause, *de-registration period* means the period specified in the corresponding law which would either result in the worker being removed, or entitle the worker to be removed, from the building and construction workers' service record kept under that corresponding law for failing to accrue service credits.

13 Exemptions from levy

- (1) For the purposes of section 34 (2) (c) of the Act, a long service levy is not payable in respect of the erection of a building (within the meaning of Part 5 of the Act) if the cost of erecting the building is less than \$25,000.
- (2) For the purposes of section 34 (2) (c) of the Act, a long service levy is not payable in respect of the erection of a building (or a part of a building) if the Corporation is satisfied that:
 - (a) the building is to be erected for a body constituted under any State or Commonwealth Act (other than an Act prescribed for the purposes of paragraph (a) of the definition of *worker* in section 3 (1) of the Act) or for a local council or county council, and

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- (b) all the persons to be employed on site in erecting the building (or part of the building) will be persons employed under a contract of employment with that body or council.
- (3) For the purposes of section 34 (2) (c) of the Act, a long service levy is not payable in respect of the erection of a building (within the meaning of Part 5 of the Act) if:
- (a) consent to the erection of the building is not required to be obtained under Part 3A, 4 or 5.1 of the *Environmental Planning and Assessment Act 1979*, and
 - (b) consent to the erection of the building is not required to be obtained under any other Act or regulation, and
 - (c) the erection of the building commenced on or after 1 May 2004.
- Note.** The reference in this subclause to Part 3A of the *Environmental Planning and Assessment Act 1979* is a reference to Part 3A of that Act as continued by Schedule 6A to that Act. (See clause 4 of that Schedule.)
- (4) For the purposes of section 34 (2) (c) of the Act, a long service levy is not payable in respect of the voluntary component of the erection of a building if the Corporation is satisfied that:
- (a) the building is to be erected by or on behalf of a church or a non-profit organisation, or by an owner-builder, and
 - (b) the building is to be erected wholly or partly by voluntary labour, or by the labour of the owner-builder.
- (5) A church, a non-profit organisation or an owner-builder by whom or on whose behalf a long service levy has been paid is entitled to a refund of so much (if any) of the levy as was, because of subclause (3), not properly payable.
- (6) In this clause:

non-profit organisation means:

- (a) a non-profit organisation having as one of its objects a charitable, benevolent, philanthropic or patriotic purpose, or
 - (b) any other non-profit sporting, religious or community organisation.
- owner-builder** means the holder of an owner-builder permit under the *Home Building Act 1989*.
- voluntary component**, in relation to the erection of a building, means that proportion of the cost of erecting the building that, in the opinion of the Corporation, the cost attributable to voluntary labour (or the labour of the owner-builder) bears to the total cost of erecting the building, but not exceeding 50% nor exceeding the percentage that will result in a long service levy of less than \$50.

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14 Prescribed rate of long service levy

- (1) For the purposes of section 35 of the Act, the prescribed rate is 0.35%.
- (2) For the purposes of section 35 of the Act, the prescribed rate for an additional amount of the long service levy under section 41 of the Act is 0.35% of the excess cost of erecting the building.

15 Prescribed amounts

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

16 Certification as to payment of levy

For the purposes of section 45 of the Act, the following offices or positions in the staff of the Corporation are prescribed offices or positions:

- (a) Director,
- (b) Assistant Director (Support),
- (c) Finance Manager.

17 Certification as to levy due

For the purposes of section 47 (5) of the Act, the persons holding the following offices in the staff of the Corporation are prescribed officers:

- (a) Director,
- (b) Assistant Director (Support),
- (c) Finance Manager.

18 Appeals to Committee

- (1) For the purposes of section 54 (1) (b) of the Act, an appeal to the Committee is to be made within 42 days after the appellant is notified of the decision appealed against.
- (2) For the purposes of section 54 (2) of the Act, an appeal to the Committee is, subject to section 52 of the Act, to be by way of a notice of appeal which is in a form approved by the Corporation and which:
 - (a) specifies the decision or that part of the decision which is being appealed against, and
 - (b) specifies the grounds of appeal.

19 Employers' books, records and particulars

For the purposes of section 56 (1) of the Act, the prescribed books and records to be kept by an employer of a worker under a contract of employment and the particulars to be contained in those books and records are:

- (a) time sheets or attendance records disclosing the attendance at work of the worker, and
- (b) books or records containing the following particulars (whether or not contained in the time sheets or attendance records):
 - (i) the name and 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 any payments to the worker under the *Long Service Leave Act 1955*,
 - (vi) the total number of days (rounded off to the nearest whole number) of building and construction work performed by the worker each week.

20 Subcontract workers' books and records

For the purposes of section 56 (2) of the Act, the prescribed books and records to be kept by a subcontract worker and the particulars to be contained in those books and records are:

- (a) books and records containing copies of accounting, taxation and other records relating to any claim or proposed claim for service credits under section 21 of the Act, and
- (b) books and records containing copies of any claim for service credits made by the subcontract worker under that section.

21 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Building and Construction Industry Long Service Payments Regulation 2006* (***the repealed regulation***), had effect under the repealed regulation continues to have effect under this Regulation.
- (2) Without limiting subclause (1):
 - (a) clauses 11 (Exemptions from levy) and 13 (Prescribed amounts) of the repealed regulation continue to have effect in relation to a building if the Corporation determines that work on its erection commenced before 1 July 1997, and

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- (b) clause 12 (Prescribed rate of long service levy) of the repealed regulation continues to have effect in relation to work on the erection of a building that the Corporation determines to have commenced before 1 January 2006, and
- (c) clause 14 (Commencement of work) of the repealed regulation continues to apply to any determination made by the Corporation in relation to those clauses.