

South Australia

**CONSTRUCTION INDUSTRY LONG SERVICE LEAVE REGULATIONS,
1988**

**REGULATIONS UNDER THE CONSTRUCTION INDUSTRY
LONG SERVICE LEAVE ACT, 1987**

Construction Industry Long Service Leave Regulations, 1988

being

No. 38 of 1988: *Gaz.* 24 March 1988, p. 712¹

as varied by

No. 61 of 1990: *Gaz.* 17 May 1990, p. 1369²
No. 218 of 1992: *Gaz.* 23 December 1992, p. 2272³
No. 199 of 1993: *Gaz.* 26 August 1993, p. 963⁴
No. 264 of 1993: *Gaz.* 18 November 1993, p. 2516⁵
No. 122 of 1995: *Gaz.* 15 June 1995, p. 2874⁶
No. 261 of 2000: *Gaz.* 2 November 2000, p. 2934⁷
No. 6 of 2001: *Gaz.* 1 February 2001, p. 417⁸
No. 262 of 2001: *Gaz.* 13 December 2001, p. 5421⁹

- ¹ Came into operation 1 April 1988: reg. 2.
² Came into operation 1 July 1990: reg. 2.
³ Came into operation 1 January 1993: reg. 2.
⁴ Came into operation (except reg. 3) 1 September 1993: reg. 2(1); reg. 3 came into operation 26 December 1993: reg. 2(2).
⁵ Came into operation 1 January 1994: reg. 2.
⁶ Came into operation 1 July 1995: reg. 2.
⁷ Came into operation 2 November 2000: reg. 2.
⁸ Came into operation 1 February 2001: reg. 2.
⁹ **Came into operation 1 January 2002: reg. 2.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last consolidation.*
- *For the legislative history of the regulations see Appendix.*

SUMMARY OF PROVISIONS

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APPENDIX LEGISLATIVE HISTORY

Citation

1. These regulations may be cited as the *Construction Industry Long Service Leave Regulations, 1988*.

Operation

2. These regulations will come into operation on 1 April, 1988.

Revocation

3. All regulations made under the repealed Act are revoked.

Interpretation

4. In these regulations, unless the contrary intention appears—

"**the Act**" means the *Construction Industry Long Service Leave Act, 1987*.

Allowable absence

5. (1) For the purposes of the definition of "**allowable absence**" in section 4 of the Act, the absence of a worker from work by reason of any of the following:

(a) a public holiday;

(b) (i) paid annual leave;

or

(ii) where the worker is paid an allowance instead of being entitled to paid annual leave, a period that is represented by the allowance (but, in this case, only up to 20 working days per year);

(c) (i) paid sick leave;

or

(ii) where the worker is paid an allowance instead of being entitled to paid sick leave, an injury or illness to which the allowance may be related (but, in this case, only up to 10 working days per year);

(d) long service leave (whether under the Act or the *Long Service Leave Act, 1987*);

(e) any injury suffered during the course of employment,

is an allowable absence.

(2) Where a worker suffers an injury in the course of employment and is entitled to compensation by way of income maintenance in respect of the injury under the *Workers Rehabilitation and Compensation Act 1986*, the absence of the worker from work because of the injury is an allowable absence pursuant to subregulation (1)(e) but only until the worker has received compensation by way of income maintenance for a period of 2 years or for separate periods that when aggregated amount to 2 years.

Corresponding law

6. For the purposes of the definition of "corresponding law" in section 4 of the Act, each of the following is a corresponding law—

- (a) *Long Service Leave (Building and Construction Industry) Act 1981*, of the Australian Capital Territory;
- (b) *Construction Industry Long Service Leave Act 1983*, of Victoria;
- (c) *Long Service Leave (Construction Industry) Act 1971*, of Tasmania;
- (d) *Construction Industry Portable Paid Long Service Leave Act 1985*, of Western Australia;
- (e) *Building and Construction Industry Long Service Payments Act 1986*, of New South Wales;
- (f) *Building and Construction Industry (Portable Long Service Leave) Act 1991*, of Queensland.

Ordinary weekly pay

7. Pursuant to paragraph (d) of subsection (3) of section 4 of the Act—

- (a) the following payments made to or for the benefit of a construction worker must be included for the purposes of a determination or calculation under that subsection:
 - (i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);
 - (ii) any payment related to sick leave;
 - (iii) any payment related to a day off work for a public holiday;
 - (iv) any payment related to a rostered day off work;
 - (v) any industry allowance or tool allowance;
 - (vi) any compensation by way of income maintenance paid in respect of a compensable disability under the *Workers Rehabilitation and Compensation Act 1986* (but not if the period, or the aggregate of separate periods, for which the compensation has already been paid exceeds 2 years); and
- (b) the following payments made to or for the benefit of a construction worker must be excluded for the purposes of a determination or calculation under that subsection:
 - (i) any payment in the nature of an annual leave loading;
 - (ii) any payment in respect of overtime;
 - (iii) any payment in the nature of a bonus;

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- (iv) any site allowance;
- (v) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back-pay;
- (vi) any payment in respect of fares or in the nature of a travelling allowance;
- (vii) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

Registration as an employer

8. (1) A person who is an employer on 1 April, 1988, and is not registered as an employer under the repealed Act must, within one month of that date, register as an employer.

(2) A person who becomes an employer after 1 April, 1988, must, within one month of the date on which he or she becomes an employer, register as an employer.

(3) In order to register as an employer, a person must post or deliver to the Board an application in writing, that is signed by or on behalf of the applicant and which sets out the following:

- (a) the name of the applicant (and if the employer is a partnership the full name of each partner must be included and if the employer is a body corporate the full names of each of the directors must be included);
- (b) any business name used by the employer;
- (c) the postal address of the business;
- (ca) in the case of a body corporate—the address of its registered office (if that address is different from the postal address);
- (d) the address at which business records are kept (if that address is different from the postal address);
- (e) the date on which wages were first paid in South Australia to a construction worker;
- (f) the number of construction workers employed.

(4) A person who fails to comply with this regulation is guilty of an offence.

Penalty: \$1 000.

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Notice of work as a supervisor

10. (1) In order to give notice under section 18 of the Act, a person must post or deliver to the Board a notice in writing that sets out the following:

7.

(a) the person's full name and address;

* * * * *

(d) the date on which he or she ceased to work as a construction worker;

(e) the date on which he or she commenced work as a supervisor in the construction industry, and the full name and address of his or her employer.

(2) A notice under subregulation (1) must be verified by a statutory declaration made by the person giving the notice.

Services

11. (1) For the purposes of section 26(2) of the Act, 2 per cent is prescribed.

(2) Pursuant to section 26(6) of the Act, but without derogating from the general meaning of "remuneration"—

(a) the following payments made to or for the benefit of a construction worker will be taken as constituting remuneration for the purposes of section 26 of the Act:

(i) any payment related to annual leave (other than a payment in the nature of an annual leave loading);

(ii) any payment related to sick leave;

(iii) any payment related to a day off work for a public holiday;

(iv) any payment related to a rostered day off work;

(v) any industry allowance or tool allowance;

or

(vi) any compensation by way of income maintenance paid in respect of a compensable disability under the *Workers Rehabilitation and Compensation Act, 1986* (but not if the period, or the aggregate of separate periods, for which the compensation has already been paid exceeds 2 years);

and

(b) the following payments made to or for the benefit of a construction worker will not be taken as constituting remuneration for the purposes of section 26 of the Act:

(i) any payment in the nature of an annual leave loading;

(ii) any payment in respect of overtime;

(iii) any payment in the nature of a bonus;

(iv) any site allowance;

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- (v) any payment made on the retirement or retrenchment of the worker, or in relation to any redundancy, other than for back-pay;
- (vi) any payment in respect of fares or in the nature of a travelling allowance;
- (vii) any payment that is in the nature of a special rate paid to the worker on an irregular basis to compensate for occasional disabilities under which work is performed, other than where the rate is paid during a period of leave with pay.

The return period

12. Pursuant to section 27(1) of the Act, the following periods in each financial year are prescribed as return periods:

July/August
September/October
November/December
January/February
March/April
May/June.

Penalty for late payment

13. (1) For the purposes of section 29(1)(a) of the Act, the prescribed rate of interest is 20 per cent per annum.

(2) For the purposes of section 29(1)(b) of the Act, the prescribed amount is \$75.

Notice of appeal

14. (1) A person who appeals to the Tribunal must, within the time allowed under section 34 of the Act, post or deliver to the tribunal a notice of appeal, that is signed by or on behalf of the appellant, and which sets out the following:

- (a) the name and address of the appellant;
- (b) details of the decision appealed against;
- (c) the grounds of appeal;
- (d) the appellant's address for service.

(2) Where a notice of appeal is received by the Tribunal, the Tribunal must forward to the Board a copy of the notice of appeal within 7 days after its receipt.

(3) The Board must then, within a further period of 21 days, forward to the Tribunal, in respect of the decision appealed against—

- (a) a copy of any transcript of evidence;
- (b) any exhibit tendered in evidence;

and

(c) a statement of the Board's reasons for the decision.

(4) The Tribunal must, at least 21 days before the date on which the appeal is to be heard, post or deliver to the appellant and the Board a notice in writing setting out the date and time of the hearing of the appeal, and the place at which it is to be heard.

Procedure on appeal

15. (1) At the hearing of an appeal—

(a) the Tribunal is not bound by the rules of evidence and may inform itself upon any matter, in any manner it thinks fit;

and

(b) the proceedings must be conducted according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) At the hearing of an appeal, any party may appear personally or by legal practitioner or other agent.

Hearing of appeal to be in public

16. (1) Unless otherwise directed by the Tribunal, appeals must be heard in public.

(2) Where the Tribunal is satisfied that it is desirable to do so—

(a) in the interests of justice;

(b) by reason of the confidential nature of any evidence or matter;

(c) in order to expedite procedures before the Tribunal;

or

(d) for any other reason that the Tribunal thinks sufficient,

the Tribunal may direct that a hearing or part of a hearing will take place in chambers and give further directions as to who may then be present.

Decision on Appeal

17. The Tribunal must give reasons for its decision in writing and provide a copy of the reasons to all of the parties to the appeal.

Self-employed contractors and working directors

18. (1) For the purposes of section 37A(4)(b) of the Act, the following periods in respect of each financial year are prescribed:

July/August
September/October
November/December
January/February
March/April
May/June.

(2) For the purposes of section 37A(4)(c)(i) of the Act, the prescribed number of days of effective service entitlement to be credited by the Board in respect of each period prescribed under subregulation (1) for which a payment is made under section 37A of the Act is the number of days of effective service entitlement that would be credited to the person under the Act for that period if he or she were working full-time in the construction industry as a construction worker.

APPENDIX**LEGISLATIVE HISTORY**

(entries in bold type indicate amendments incorporated since the last consolidation)

Regulation 1:	substituted by 61, 1990, reg. 3
Regulation 4:	definition of "the Act" substituted by 61, 1990, reg. 4
Regulation 5:	redesignated as reg. 5(1) by 6, 2001, reg. 3
Regulation 5(2):	inserted by 6, 2001, reg. 3
Regulation 6:	varied by 61, 1990, reg. 5; 199, 1993, reg. 3
Regulation 7:	substituted by 61, 1990, reg. 6; 122, 1995, reg. 3; varied by 6, 2001, reg. 4
Regulation 8(3):	varied by 61, 1990, reg. 7
Regulation 9:	revoked by 264, 1993, reg. 3
Regulation 10(1):	varied by 61, 1990, reg. 8; 122, 1995, reg. 4(b)
Regulation 10(1)(b) and (c):	revoked by 122, 1995, reg. 4(a)
Regulation 11:	substituted by 61, 1990, reg. 9
Regulation 11(1):	varied by 218, 1992, reg. 3; 199, 1993, reg. 4; substituted by 122, 1995, reg. 5; varied by 261, 2000, reg. 3; 262, 2001, reg. 3
Regulation 11(2):	varied by 6, 2001, reg. 5
Regulation 12:	substituted by 61, 1990, reg. 9
Regulation 13:	redesignated as s. 13(1) by 61, 1990, reg. 10
Regulation 13(2):	inserted by 61, 1990, reg. 10
Regulation 18:	inserted by 122, 1995, reg. 6