

INDUSTRIAL ARBITRATION (FORTY HOURS WEEK) AMENDMENT ACT.

Act No. 6, 1947.

An Act to make further provision for regulating the hours of work in certain industries; to amend the Industrial Arbitration Act, 1940, and certain other Acts; and for purposes connected therewith. [Assented to, 28th March, 1947.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Industrial Arbitration (Forty Hours Week) Amendment Act, 1947." Short title, commencement, etc.

(2) The Industrial Arbitration Act, 1940, as amended by subsequent Acts and by this Act, may be cited as the Industrial Arbitration Act, 1940-1947.

(3) Except where otherwise expressly provided in this Act this Act shall commence upon the first day of July, one thousand nine hundred and forty-seven, or upon such earlier day as may be appointed by the Governor and notified by proclamation published in the Gazette.

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Amendment Act.**

No. 6, 1947. **Amendment of Act No. 2, 1940.**

New sec. 2A.

Construction of Act.

Heading to Division 1.

Substituted section 63 and new sections 63A, 63B, 63C. Directions re hours.

2. (1) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is amended—

(a) by inserting next after section two the following new section:—

2A. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

(b) by omitting from the heading to Division 1 of Part VI the words "*Pending declaration*" and by inserting in lieu thereof the words "*Standard Hours*";

(c) by omitting section sixty-three and by inserting in lieu thereof the following sections:—

63. The ordinary working hours in all industries other than coal mining to which this Act applies shall, for the purposes of this Act, be as prescribed in or under this section and the following directions shall be observed by the commission and the committees in making awards and by the parties in making agreements:—

(a) In all industries subject to the provisions of this section the number of ordinary working hours of an employee shall not exceed—

- (1) eight hours during any consecutive twenty-four hours; or
- (2) forty hours per week; or
- (3) eighty hours in fourteen consecutive days; or
- (4) one hundred and twenty hours in twenty-one consecutive days; or
- (5)

(5) one hundred and sixty hours in No. 6, 1947.
twenty-eight consecutive days.

Where in any industry or calling meal time or crib time was at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947, included in the hours of labour by award or agreement, or by well-established practice in the industry, such meal time or crib time shall be counted as working time.

Where a working period has been fixed by an award or agreement before or after the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947, the working period shall not be altered to any of the longer working periods referred to in this section except by agreement or award made by consent.

(b) The working time of an employee in a shift in underground occupations or occupations in which the conditions as to temperature, ventilation, and lighting are similar to those obtaining in underground occupations, shall not exceed six hours if for four hours of the working time of the shift the temperature of the place where the employee is occupied shall have exceeded eighty-one degrees Fahrenheit thermometer using a wet bulb.

For the purposes of this paragraph any number of employees whose regular time for beginning work is approximately the same and whose regular time of terminating work is approximately the same are to be deemed a shift of employees.

(c) Where by an award or agreement the ordinary working hours on any day or days

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days in any week are fixed at less than eight, such hours on the other days of the week may exceed eight per day; and where under an award or agreement the working hours are or may be worked in less than six days per week, such hours may exceed eight per day.

No employee shall be required to work without payment of overtime on more than six out of seven consecutive days except in an industry which is subject to an award or agreement providing for shift work, and in which the employee is not required to work more than eleven shifts in twelve consecutive days, or except in cases of emergency not under the control of the employer.

- (d) The commission or a committee may increase the ordinary working hours or the number of days on which they may be worked or both such hours and days beyond those specified in this section in the public interest.
- (e) (i) The commission or a committee may reduce the ordinary working hours below the number of hours specified in this section of any employees engaged upon work which in the opinion of the commission or committee is prejudicial to health.
- (ii) The ordinary working hours of the employees or any class of employees in any industry may be reduced below the number of hours specified in this section by agreement or award made by consent.

The Crown may, where in the opinion of the Minister, the public interests are or would be likely to be

be affected by any agreement referred to in this subparagraph, apply to the commission at any time for an order suspending, varying or rescinding such agreement, and the commission shall have jurisdiction to make any such order if it thinks fit. No. 6, 1947.

(f) Where in any industry the ordinary time of work was at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947, fixed by award or agreement or by well-established practice in the industry, such time shall not be exceeded thereafter in respect of such industry.

63A. (1) The terms of each award or agreement in force at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947, shall be deemed to be varied to the extent necessary to give effect to the provisions of section sixty-three of this Act as from such commencement. Existing awards and agreements.

(2) Wages and salaries fixed upon a weekly or longer basis by any award or agreement in force at the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947, or any award made or agreement entered into after such commencement shall not be reduced by reason of any reduction of the ordinary working hours by or under section sixty-three of this Act.

(3) Where the ordinary working hours in an industry for the time being subject to an award or agreement are reduced by or under section sixty-three of this Act, the rate of wages specified in the award or agreement as payable upon a daily or hourly basis shall, by virtue of this subsection and without any further award or variation or amendment of the award or agreement, be increased to such rate as will

provide

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provide each employee working full time with the same amount of wages as he would have received for working full time under the provisions of the award or agreement prior to such reduction of hours.

(4) Where the ordinary working hours in an industry for the time being subject to an award or agreement are reduced by or under section sixty-three of this Act, any piecework rate specified in the award or agreement shall, by virtue of this subsection and without any further award or variation or amendment of the award or agreement, be increased to such rate as will provide each employee working full time with the same remuneration as he would have received working full time at the same speed under the provisions of the award or agreement prior to such reduction of hours.

(5) The increase in the rate of wages and piecework rate prescribed by subsections three and four of this section shall take effect—

- (a) in the case in which the commission or a committee exercises the jurisdiction conferred by subparagraph (i) of paragraph (e) of section sixty-three of this Act, as from the date of the order of the commission or committee, or as from such future date as is specified in the order; and
- (b) in the case of an agreement or award made by consent as mentioned in subparagraph (ii) of paragraph (e) of section sixty-three of this Act, as from such date as is specified in the agreement or award; and
- (c) in other cases, as from the date of the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947.

(6) Any increase in the rate of wages or ~~No. 6, 1947.~~ piecework rate under this section shall be binding and enforceable in the same manner as if the same had been made by an award of the commission or a committee.

(7) Where the ordinary working hours in an industry subject to an award or agreement are, upon the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947, reduced by section sixty-three of this Act, the registrar may (subject to appeal to the commission) upon application to him in the prescribed manner by any party whose appearance is recorded on the making of the award and upon notice to the other parties whose names are so recorded, and in the case of an agreement, by any party to the agreement and upon notice to the other parties thereto, make such variation or amendment in the terms of the award or agreement as will clearly express the variations or amendments of the award or agreement necessary to bring it into conformity with or to give effect to the provisions of section sixty-three of this Act and this section, and make any necessary consequential amendment as to the starting or finishing time, overtime or other matter as may be necessary.

Any such variation or amendment of the award or agreement made by the registrar shall be published in the Gazette.

The registrar may refer any such application or any matter arising out of any such application to the commission for directions.

63B. The provisions of section 27A of the Fire <sup>Saving of
sec. 27A
of Act
No. 9, 1909.</sup> Brigades Act, 1909, as amended by subsequent Acts, shall not be affected by any of the provisions of section sixty-three or section 63A of this Act.

63C. Any person making a contract or agreement express or implied, and whether verbally or in writing, which provides for the working of hours ^{Penalty.}

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Secs. 64, 65.
Sec. 68.
(Overtime
rates.)

Sec. 2.
(Consequen-
tial.)

**Amendment
of Act
No. 2,
1940, sec. 63.
(Directions
re hours.)**

hours in excess of those prescribed by or under this Part or who is guilty of a contravention of any of the provisions of this Part shall be liable to a penalty not exceeding fifty pounds, recoverable before an industrial magistrate.

- (d) by omitting sections sixty-four and sixty-five;
- (e) by omitting from section sixty-eight the words "on the fifth day of January, one thousand nine hundred and thirty-one," and by inserting in lieu thereof the words "immediately before the commencement of the Industrial Arbitration (Forty Hours Week) Amendment Act, 1947";
- (f) by omitting from the matter relating to Part VI in section two the words and symbols "Division 1—Pending Declaration—s. 63" and by inserting in lieu thereof the words and symbols "Division 1—Standard Hours—ss. 63-63c."

(2) (a) The Industrial Arbitration Act, 1940, as amended by subsequent Acts, is amended by inserting next after paragraph (e) of section sixty-three the following new paragraph:—

- (e1) The ordinary working hours of the employees or any class of employees in any industry may be reduced below the number of hours specified in this section by agreement or award made by consent.

The Crown may, where in the opinion of the Minister the public interests are or would be likely to be affected by any agreement referred to in this paragraph, apply to the commission at any time for an order suspending, varying or rescinding such agreement, and the commission shall have jurisdiction to make any such order if it thinks fit.

(b) This subsection shall commence upon the day upon which His Majesty's Assent to this Act is signified.