

## ANNUAL HOLIDAYS ACT.

Act No. 31, 1944.

George VI.  
No. 31, 1944.

An Act to provide for annual holidays for workers; to amend the Industrial Arbitration Act, 1940, and certain other Acts; and for purposes connected therewith. [Assented to, 8th December, 1944.]

**B**E 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:—

Short title,  
commence-  
ment and  
construction

**1.** (1) This Act may be cited as the "Annual Holidays Act, 1944."

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) 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.

Interpre-  
tation.  
cf. N.Z. Act,  
1944, No. 5,  
s. 2.

**2.** (1) In this Act, unless the context otherwise indicates or requires—

"Agreement" means an industrial agreement for the time being in force under the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

"Award" means an award for the time being in force under the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

"Employer" means any person employing any worker or workers and includes the Crown.

"Inspector"

“Inspector” means an inspector appointed under **No. 31, 1944.**  
the Industrial Arbitration Act, 1940, or any Act  
amending or replacing that Act.

“Ordinary pay,” in relation to any worker, means remuneration for the worker’s normal weekly number of hours of work calculated at the ordinary time rate of pay; and, where the worker is provided with board or lodging by his employer, includes the cash value of that board or lodging.

“Prescribed” means prescribed by this Act or by regulations made under this Act.

“Week,” in relation to any worker, means the worker’s ordinary working week.

“Worker” means person employed, whether on salary or wages or piecework rates, or as a member of a butty-gang, and the fact that a person is working under a contract for labour only, or substantially for labour only, or as lessee of any tools or other implements of production, or as an outworker, or is working as a salesman, canvasser, collector, commercial traveller, insurance agent, or in any other capacity in which he is paid wholly or partly by commission, shall not in itself prevent such person being held to be a worker.

(2) For the purposes of the definition of the term “ordinary pay” in subsection one of this section—

(a) where no ordinary time rate of pay is fixed for a worker’s work under the terms of his employment the ordinary time rate of pay shall be deemed to be the average weekly rate earned by him during the period in respect of which the right to the annual holiday accrues;

(b) where no normal weekly number of hours is fixed for a worker under the terms of his employment, the normal weekly number of hours of work shall be deemed to be the average weekly number of hours worked by him during the period in respect of which the right to the annual holiday accrues;

(c)

**Annual Holidays Act.**

No. 31, 1944.

- (c) the cash value of any board or lodging provided for a worker shall be deemed to be its cash value as fixed by or under the terms of the worker's employment or, if it is not so fixed, shall be computed at the rate of fifteen shillings a week for board and five shillings a week for lodging.

Annual  
holidays  
with pay.

**3.** (1) Except as otherwise provided in this Act, every worker shall at the end of each year of his employment by an employer become entitled to an annual holiday of two weeks on ordinary pay.

(2) The annual holiday shall be given and taken in two consecutive weeks or, if the worker and the employer so agree, in two separate periods and not otherwise.

(3) If the worker and the employer so agree, the annual holiday or either of such separate periods may be taken wholly or partly in advance before the worker has become entitled to the annual holiday.

(4) The annual holiday shall be given by the employer and shall be taken by the worker before the expiration of a period of six months after the date upon which the right to such holiday accrues: Provided that the giving and taking of the whole or any separate period of such annual holiday may, with the consent in writing of the Industrial Registrar, or Deputy Industrial Registrar appointed under the Industrial Arbitration Act, 1940, as amended by subsequent Acts, be postponed for a period to be specified by him in any case where he is of opinion that circumstances render such postponement necessary or desirable.

(5) Except as provided in section four of this Act, payment shall not be made by an employer to a worker in lieu of any annual holiday or part thereof to which the worker is entitled under this Act nor shall any such payment be accepted by the worker.

(6) (a) The employer shall give each worker at least seven days notice of the date from which his annual holiday shall be taken.

(b) The employer shall pay each worker in advance before the commencement of the worker's annual holiday, his ordinary pay for the holiday period.

(7)

(7) Where the annual holiday or any part thereof has been taken before the right to the annual holiday has accrued the right to a further annual holiday shall not commence to accrue until after the expiration of the year of employment in respect of which the annual holiday or part has been so taken. No. 31, 1944.

(8) Where any special or public holiday for which the worker is entitled to payment under any Act, award or agreement or under his contract of employment, occurs during any period of an annual holiday taken by a worker under this section, the period of the holiday shall be increased by one day in respect of that special or public holiday.

4. (1) Where the employment of a worker who has become entitled to the annual holiday provided by this Act is terminated, and the worker has not taken any part of that holiday, the employer shall be deemed to have given the holiday to the worker from the date of the termination of the employment, and shall forthwith pay to the worker, in addition to all other amounts due to him, his ordinary pay for the period of that annual holiday. Holiday pay where holiday is not taken.

(2) Where the employment of a worker who has become entitled to the annual holiday provided by this Act is terminated, and the worker has taken part of that holiday, the employer shall be deemed to have given the remaining part of that holiday to the worker from the date of the termination of the employment and shall forthwith pay to the worker, in addition to all other amounts due to him, his ordinary pay for the period of that remaining part.

(3) (a) This subsection applies with respect to every period of employment of a worker by any employer which is less than one year, such period being computed from the date of the commencement of the employment or (where the worker has during the employment become entitled to any annual holiday or holidays under section three of this Act) computed from the date upon which he became entitled to that annual holiday, or to the last annual holiday, as the case may be.

(b)

No. 31, 1944.

(b) Where the employment of any worker by any employer is terminated at the end of a period of employment to which this subsection applies, the employer shall forthwith pay to the worker, in addition to all other amounts due to him, an amount equal to one twenty-fifth of his ordinary pay for that period of employment.

(4) Where the annual holiday under section three of this Act or any part thereof has been taken in advance by a worker pursuant to subsection three of that section, and

- (a) the employment of the worker is terminated before he has completed the year of employment in respect of which such annual holiday or part was taken; and
- (b) the sum paid by the employer to the worker as ordinary pay for the annual holiday or part so taken in advance exceeds the sum which the employer is required to pay to the worker under subsection three of this section,

the employer shall not be liable to make any payment to the worker under subsection three of this section, and shall be entitled to deduct the amount of such excess from any remuneration payable to the worker upon the termination of the employment.

Special provisions—  
Annual  
holidays  
otherwise  
than under  
this Act.

5. (1) The following provisions shall apply in every case where provision is made by or under any Act, other than this Act, or by an award, agreement or contract of employment for annual holidays or annual leave for any worker—

- (a) where the worker is entitled under such provision to any benefit that is more favourable to the worker than the benefits provided by section three or section four of this Act, as the case may be, that section shall not apply to the worker;
- (b) where the worker is entitled under any such provision to any benefit that is not more favourable to the worker than the benefits provided by section three or section four of this Act, as the case may be, that section shall apply to the worker and no benefit shall be allowed to the worker under that provision in respect of any period of employment after the commencement of this Act.

(2)

**Annual Holidays Act.**

281

No. 31, 1944.

(2) Where, under any award or agreement, provision is made for the granting to a worker who is a seven-day shift worker and is required to work regularly on Sundays and public holidays of a holiday in addition to that granted to other workers under such award or agreement—

- (a) such additional holiday shall not be regarded as a benefit under that award or agreement for the purposes of subsection one of this section;
- (b) the rights of the worker to such additional holiday shall not be affected by anything contained in this Act.

**6.** The employment of a worker employed at the date of the commencement of this Act shall be deemed, for the purposes of this Act, to have commenced on that date. Commencement of employment.

**7.** (1) Where provision is made by or under any Act, other than this Act, or by any award, agreement or contract of employment in force at the commencement of this Act, for an annual holiday for any worker who is in employment at such commencement, and the worker has not at such date completed the qualifying period of employment which would entitle him to such annual holiday, he shall be entitled to receive an annual holiday of a period which bears the same proportion to the period of annual holiday specified in that provision as the portion of such qualifying period during which he has been employed immediately before the commencement of this Act bears to the whole of such qualifying period. Worker in employment at commencement of Act.

(2) Where provision is made by or under any Act, other than this Act, or by any award, agreement or contract of employment in force at the commencement of this Act for an annual holiday for any worker who is in employment at such commencement, and the worker has before such commencement become entitled under that provision to such annual holiday but has not taken the same, his right to such annual holiday shall not be affected by anything contained in this Act.

**8.** (1) The provisions of this Act shall have effect notwithstanding any stipulation to the contrary whether made before or after the commencement of this Act. Contracting out prohibited.

(2)

**Annual Holidays Act.**

No. 31, 1944.

(2) No contract or agreement made or entered into either before or after the commencement of this Act shall operate to annul or vary or exclude any of the provisions of this Act.

Employers  
to keep  
holiday  
record.

**9.** Every employer shall keep or cause to be kept a holiday record in or to the effect of the form and containing the particulars prescribed.

Powers of  
inspectors.

**10.** (1) Every inspector shall have power at any reasonable times—

- (a) to enter, inspect and examine the premises of any employer or any premises in which he has reasonable cause to believe that any person is employed;
- (b) to require an employer to produce, at such time and place as the inspector may specify, the holiday record required to be kept under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;
- (d) to exercise all other powers that may be necessary to ensure the carrying out of the provisions of this Act.

(2) No inspector shall have any authority under this Act to enter those portions of a building which are used exclusively for the purposes of a private dwelling.

Penalty.

**11.** (1) Every person who contravenes or fails to comply in any respect with any provision of this Act shall be liable to a penalty not exceeding fifty pounds.

(2) Every person who—

- (a) makes any false or misleading statement in, or any material omission from, any holiday record which he is required to keep; or
- (b) obstructs any inspector in the exercise of his powers under this Act; or
- (c) fails to comply with any requirement or direction lawfully given by an inspector under this Act or to furnish any information lawfully demanded under this Act by an inspector,

shall be liable to a penalty not exceeding fifty pounds.

**12.**

**12.** (1) All penalties imposed by this Act or the regulations made thereunder may be recovered summarily before a court of petty sessions holden before a stipendiary or police magistrate sitting alone or before an industrial magistrate appointed under the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act.

No. 31, 1944.  
Proceedings  
for  
recovery of  
penalties.

Proceedings for such recovery may be taken by an inspector acting with the authority of the Minister or by the secretary of an industrial union of employers or employees whose members are engaged in any industry concerned, or by any person whose rights are impaired.

(2) In any such proceedings the stipendiary or police magistrate or industrial magistrate may, in addition to the imposition of any penalty, make such an order with respect to any remuneration or payment due to a worker under this Act as might have been made in proceedings taken under section thirteen of this Act. Such order may be made without motion and shall be a bar to further proceedings under section thirteen of this Act in respect of such remuneration or payment.

(3) In any proceedings under this section the magistrate before whom such proceedings are taken may award costs to either party and assess the amount of such costs. Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(4) In a prosecution for any breach or contravention of this Act, an authority to prosecute purporting to have been signed by the Minister shall be evidence of such authority without proof of the Minister's signature.

(5) The prosecutor may conduct his case personally or by his counsel, attorney or an agent duly authorised by him in writing.

**13.** (1) Any worker may apply to a court of petty sessions holden before a stipendiary or police magistrate sitting alone, or to any industrial magistrate appointed under the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act, for an order directing the employer to pay to the worker the full amount of any remuneration or payment which has become due to the worker under this Act at any time during a period of eighteen months immediately preceding the date of the application.

Recovery  
of holi-  
day pay.

The



**No. 31, 1944.** The magistrate may make any order he thinks just in the matter and may award costs to either party, and assess the amount of such costs.

Such costs shall be according to a scale to be fixed by the Industrial Commission of New South Wales.

(2) A worker may take any such proceedings and may recover any such moneys due, and costs, notwithstanding the fact that he has not reached the age of twenty-one years.

(3) In any case where the worker is a person employed to do any work for which the price or rate has been fixed by an award or agreement, proceedings under this section may, with the consent in writing of the worker, be taken by the secretary or other officer of an industrial union registered as such under the Industrial Arbitration Act, 1940, or any Act amending or replacing that Act, concerned in the industry to which such award or agreement relates, in the name and on behalf of the worker.

Any amount ordered to be paid in proceedings under this subsection may be paid to such secretary or other officer and the receipt of such secretary or other officer shall be a sufficient discharge to the employer for the amount mentioned in the receipt.

Any amount so paid to such secretary or other officer (less any costs properly incurred in connection with the proceedings and not paid by the employer) shall be held by him on trust for the worker on whose behalf the proceedings were taken.

Provisions  
as to  
enforcement  
of orders,  
etc.

**14.** The provisions of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and the regulations made thereunder relating to proceedings before an industrial magistrate, the recovery of any penalty and the enforcement of any order for the payment of money and to appeals from an industrial magistrate to the Industrial Commission of New South Wales shall apply mutatis mutandis to proceedings before a court of petty sessions or an industrial magistrate for the recovery of any penalty or of any remuneration or payment under this Act.

**15.**

**15.** (1) The Governor may make regulations not <sup>No. 31, 1944.</sup> inconsistent with this Act prescribing all matters which <sup>Regulations.</sup> by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Such regulations may impose a penalty not exceeding twenty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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