

**ANNUAL HOLIDAYS (AMENDMENT) ACT.**

**New South Wales**



ANNO SEXTO DECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 50, 1967.**

An Act to make further provisions with respect to annual holidays for workers; for this and other purposes to amend the Annual Holidays Act, 1944-1965; and for purposes connected therewith. [Assented to, 30th October, 1967.]

**B**E it enacted by the Queen'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 and citation.** 1. (1) This Act may be cited as the "Annual Holidays (Amendment) Act, 1967".

(2)

*Annual Holidays (Amendment).*

(2) The Annual Holidays Act, 1944, as amended by No. 50, 1967 subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Annual Holidays Act, 1944–1967.

2. The Principal Act is amended—

Amendment  
of Act No.  
31, 1944.

- (a) by omitting from paragraph (a1) of subsection two of section two the words “in respect of which the right to the annual holiday, or payment under section four of this Act, as the case may be, accrues” and by inserting in lieu thereof the words “of twelve months immediately preceding the annual holiday or, as the case may be, during the period of employment in respect of which a right to payment under subsection three of section four or under section 4A of this Act accrues”;
- (b) by omitting from paragraph (a2) of the same subsection the words “in respect of which the right to the annual holiday, or payment under section four of this Act, as the case may be, accrues,” and by inserting in lieu thereof the words “of twelve months immediately preceding the annual holiday or, as the case may be, during the period of employment in respect of which a right to payment under subsection three of section four or under section 4A of this Act accrues”;
- (c) by omitting from paragraph (b) of the same subsection the words “the period in respect of which the right to the annual holiday accrues” and by inserting in lieu thereof the words “the applicable period referred to in paragraph (a1) of this subsection”;
- (d) by inserting next after the same subsection the following new subsections :—

Sec. 2.  
(Interpre-  
tation.)

(3) Notwithstanding anything contained in paragraph (a1) of subsection two of this section,

**for**

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for the purposes of the definition of the term "ordinary pay" in subsection one of this section, where a worker is remunerated partly in relation to an ordinary time rate of pay fixed by the terms of his employment and based on age or years of service and partly in relation to a bonus, incentive or other similar scheme, the worker's ordinary pay shall be deemed to be the sum of—

- (a) the worker's weekly remuneration at the ordinary time rate of pay so fixed for his age or years of service at the commencement of the annual holiday or, as the case may be, at the end of the period of employment in respect of which a right to payment under subsection three of section four or section 4A of this Act, accrues; and
- (b) the average of the amounts received by the worker each week in respect of the bonus, incentive or other similar scheme—
  - (i) during the period actually worked by him during the twelve months immediately preceding the commencement of his annual holiday; or
  - (ii) during the period of employment in respect of which a right to payment under subsection three of section four or section 4A of this Act accrues,

as the case may be,

after excluding any amounts paid to him in respect of shift work, overtime or other penalty rates.

(4) For the purposes of paragraphs (a1) and (b) of subsection two and of subsection three of this section, in computing the period actually worked by a worker no regard shall be had to any period during which, on account of illness or injury,

the

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the worker was temporarily assigned to duties or work entitling him to payment of wages lower than the wages he would have received had he not been assigned to those duties or that work on that account, unless the worker was assigned to those duties or that work during the whole of the period actually worked by him. **No. 50, 1967**

## 3. The Principal Act is further amended—

Further  
amendment  
of Act No.  
31, 1944.

- (a) by inserting in subsection five of section three after the words "section four" the words, figure and letter "or section 4A"; **Sec. 3.**  
(Annual holidays with pay.)
- (b) by inserting next after section four the following new section :— **New sec. 4A.**

## 4A. (1) (a) In this section—

Annual  
close-down.

"Period of employment" means the period during which a worker is employed by an employer referred to in subsection two of this section, being a period computed—

- (a) where the worker has not during the employment with that employer become entitled to any annual holiday under section three of this Act, from the date of commencement of the employment with that employer; or
- (b) where the worker has during the employment with that employer become entitled to any annual holiday or holidays under section three of this Act, from the date upon which the worker last became entitled to an annual holiday,

up to the commencement of the specified period affecting that worker.

"Specified

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“Specified period” means the period specified by an employer pursuant to subsection two of this section.

(b) This section, subsections two and three excepted, shall apply only to a worker to whom notice has been given pursuant to this section.

(c) Subsections two and three of section three of this Act shall not apply to a worker to whom notice has been given pursuant to this section.

(2) Subject to subsection three of this section, an employer may give notice to a worker employed in any part of his establishment that, during a period specified when giving that notice, that establishment or part will be temporarily closed (or reduced to a nucleus) for the purpose of giving an annual holiday or leave without pay to the workers to whom such notice has been given.

(3) Notice pursuant to subsection two of this section—

(a) shall be given to a worker not less than one month before the commencement of the specified period or, in the case of a worker who commences his employment less than one month before the commencement of the specified period, on the day he commences his employment; and

(b) shall not be given by an employer more than once in any calendar year.

(4) Where, immediately before the commencement of the specified period, a worker is not entitled under section three of this Act to any holiday—

(a) he shall be given and shall take leave without pay for the specified period; and

(b)

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(b) he shall, in addition, be paid— No. 50, 1967

- (i) three forty-ninths of his ordinary pay for his period of employment; and
- (ii) his ordinary pay for any special or public holiday, during the period of his leave without pay, for which he would be entitled to payment under any Act, award or agreement or under his contract of employment.

(5) Where, immediately before the commencement of the specified period, a worker is under section three of this Act entitled to a holiday of a duration less than that of the specified period—

- (a) he shall be given and shall take the whole of that holiday during the specified period;
- (b) he shall be given and shall take leave without pay for the balance of the specified period; and
- (c) he shall, in addition, be paid the amounts referred to in paragraph (b) of subsection four of this section.

(6) Where, immediately before the commencement of the specified period, a worker is under section three of this Act entitled to a holiday of a duration not less than that of the specified period—

- (a) he shall, on and from the commencement of the specified period, be given and shall take the whole of that holiday; or
- (b) where the worker and the employer so agree, he shall, on and from the commencement of the specified period, be given and shall take part of his holiday for a period not less than the specified period and postpone the taking of the balance of his holiday until a time to be agreed upon between the worker and the employer.

(7)

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(7) Where payment has been made to a worker pursuant to subsection four or five of this section he shall be deemed—

- (a) to have completed a year of employment for the purposes of this Act immediately before the commencement of the specified period; and
- (b) to have been given the whole of the annual holiday to which he would be entitled for that year of employment.

Sec. 5.  
(Special provisions—  
Annual holidays  
otherwise  
than under  
this Act.)

- (c) (i) by omitting from paragraph (a) of subsection one of section five the words “or section four” and by inserting in lieu thereof the words “, section four or section 4A”;
- (ii) by omitting from paragraph (b) of the same subsection the words “or section four” and by inserting in lieu thereof the words “, section four or section 4A”;
- (iii) by inserting in the same paragraph after the word “Act” where secondly occurring the words “in the case of a benefit not more favourable than that provided by section three or section four of this Act or, after the commencement of the Annual Holidays (Amendment) Act, 1967, in the case of a benefit not more favourable than that provided by section 4A of this Act”.