

STATUTORY RULES

1946. No. 82.

REGULATIONS UNDER THE NATIONAL SECURITY ACT 1939-1943.*

I the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *National Security Act 1939-1943*.

Dated this tenth day of May, 1946.

HENRY

Governor-General.

By His Royal Highness's Command,

E. J. HOLLOWAY

for and on behalf of the Minister of
State for Defence.

AMENDMENTS OF THE NATIONAL SECURITY (SUPPLEMENTARY) REGULATIONS.†

1. After regulation 118^{AD} of the National Security (Supplementary) Regulations, the following regulation is inserted:—

"118^{AC}.—(1.) For the purpose of celebrating the victory of the Allied Nations, the tenth day of June, One thousand nine hundred and forty-six (in this regulation referred to as 'the prescribed day')—

Holiday to
celebrate
"Victory Day."

(a) is hereby declared to be a public holiday, and a bank holiday in the Commonwealth;

(b) shall be observed as a holiday in every court of the Commonwealth or of a State or Territory of the Commonwealth; and

(c) shall be deemed to be a holiday observed under the *Commonwealth Public Service Act 1922-1945*.

"(2.) Where any person is required, in pursuance of any process or notification issued by any court or other tribunal, or by any authority, to attend before a court, tribunal or authority on the prescribed day, he shall not be required to attend on that day but he shall, on the next business day of the court, tribunal or authority following the prescribed day—

(a) attend, at the office of the court, tribunal or authority before the Registrar or other proper officer of the court or tribunal or before the authority; and

* Notified in the *Commonwealth Gazette* on 10th May, 1946.

† Statutory Rules 1940, No. 126, as amended to date. For previous National Security (Supplementary) Regulations, see footnote † to Statutory Rules 1940, No. 86, and see also Statutory Rules 1943, No. 46.

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- (b) receive from the Registrar, other officer or authority, a notification of the day and time at which he shall attend before the court, tribunal or authority, and the day and time so notified to him shall be deemed to be the day and time specified in the process or notification as the day and time for his attendance before the court, tribunal or authority.

"(3.) Subject to this regulation, where, by or under any law, deed, contract or agreement, any act or thing is required to be done on the prescribed day, that act or thing may be done on the business day next following the prescribed day.

"(4.) Nothing in this regulation shall prevent a court from sitting on the prescribed day, if it considers it necessary so to do, and, if a court sits on the prescribed day, every person performing services in connexion with any proceedings before the court on that day shall be deemed to have been directed to work under this regulation.

"(5.) Subject to this regulation, every employee shall be entitled to a holiday, with pay, and every employer who is actively engaged in the conduct or control of any business shall be entitled to a holiday on the prescribed day.

"(6.) Notwithstanding the provisions of any other law, except in the case of—

- (a) illness or incapacity; or
- (b) domestic or other pressing emergency,

an employee or employer, who is directed by a Minister or a State Minister to work during the prescribed day, shall not, without reasonable cause (proof whereof shall lie upon him), fail to perform his duties or absent himself from his place of employment or business or from the place where his duties are usually performed, at any time, on that day, during the period during which he is required by the terms and conditions of his employment to be, on an ordinary working day or business day, at that place of employment or business, or, where there are no such requirements, during which it is customary or usual for an employee or employer engaged in similar classes of employment or business, to be, on an ordinary working day or business day, at the place of employment or business.

"(7.) Any employee of an employer to whom a direction under this regulation is given or is deemed to have been given, who is required by that employer to work during the prescribed day, shall be deemed to have been directed under this regulation so to work.

"(8.) The employer of an employee entitled to a holiday under this regulation shall for that holiday, where the employee is not directed or deemed to have been directed under this regulation or is not required by his employer to work on that day, pay to the employee in respect of the pay period which includes that holiday—

- (a) where the employee does not work under a shift system or under a piece-work or other system of payment by results—the amount ordinarily payable to him for one full day's work during ordinary hours of duty on an ordinary working day;

- (b) where the employee works under a shift system but does not work under a piece-work or other system of payment by results—the amount ordinarily payable to him for working one full shift on an ordinary working day; or
- (c) where the employee works under a piece-work or other system of payment by results—the amount ordinarily payable by his employer for one full day's work, or for one full shift, on an ordinary working day to an employee engaged in similar work and paid on a time basis, or, where the employer has no such employees, an amount equal to the average daily earnings of the employee during the four weeks immediately preceding the prescribed day.

“(9.) Where an employee is directed or deemed to have been directed under this regulation, or is required by his employer, to work on the prescribed day, compensation for work in pursuance of that direction or requirement shall be as prescribed by the appropriate law, and for the purposes of this sub-regulation the prescribed day shall be deemed to be a holiday within the meaning of that law.

“(10.) Where an employee is entitled to be remunerated for the work performed by him in respect of an engagement for employment which is not on a time basis, he shall be entitled to be remunerated in respect of the holiday under this regulation as if he were employed on a time basis and the holiday was included in a pay period in respect of which he was entitled to pay.

“(11.) An employee who is entitled to any payment under this regulation may sue for, and recover, in any court of competent jurisdiction, any payment to which he is entitled.

“(12.) If any dispute arises between an employer and an employee with respect to the operation of any provision of this regulation, an Industrial Authority having jurisdiction to determine disputes or claims in respect of rates of pay or conditions of employment in relation to the work on which the employee is employed may, on application by the employer or any organization of employers or employees to which the employer or employee belongs, hear the dispute and advise the parties as to the terms on which the dispute should be settled and, failing acceptance of those terms, shall hear and determine the dispute and, if necessary, determine the amount or rate of pay to be paid to the employee under this regulation, and the parties to the dispute shall comply with the determination.

“(13.) Any person who, except on the ground of illness or incapacity or domestic or other pressing emergency—

- (a) was absent from work without leave or authority on the last working day before the prescribed day and on the working day next succeeding the prescribed day, shall not, unless he worked on the prescribed day in accordance with a direction under this regulation or a requirement of his employer and fully complied with the direction or requirement, be entitled to the benefit of this regulation; or
- (b) failed to work on the prescribed day in accordance with any direction under this regulation, or any requirement of his employer, applicable to the employee, shall not be entitled to the benefit of this regulation.

"(14.) For the purposes of this regulation—

'employee' means a person—

- (a) who is employed by any person in any industry;
- (b) who is employed by any person in or in connexion with any business, trade, occupation or profession;
- (c) who is employed by the Commonwealth or by any authority of the Commonwealth; or
- (d) who is employed by a State or by any authority of a State;

'Industrial Authority' means the Commonwealth Court of Conciliation and Arbitration, and includes any other tribunal or person constituted by or under any law of the Commonwealth for the purpose of hearing and determining industrial disputes and making awards or orders in settlement thereof, and any tribunal which is a State Industrial Authority within the meaning of the *Commonwealth Conciliation and Arbitration Act 1904-1934*, and also includes the Public Service Arbitrator;

'law' means law of the Commonwealth or of a State or Territory of the Commonwealth and includes an industrial award, order, determination or agreement;

'State Minister' means a Minister of State for any State

Directions.

2. Regulation 118a of the National Security (Supplementary) Regulations is amended by omitting from sub-regulation (1.) the word "two" and inserting in its stead the word "three".