

WOMEN'S EMPLOYMENT.

No. 55 of 1942.

An Act to Encourage and Regulate the
Employment of Women for the purpose of
aiding the Prosecution of the present War.

[Assented to 6th October, 1942.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title.

1. This Act may be cited as the *Women's Employment Act 1942*.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Provisions relating to employment of women.

3. The provisions, in the Schedule to this Act, relating to the employment of women, shall by virtue of, but subject to, this Act, have and continue to have the force of law and be deemed, as on and from the twenty-third day of September, One thousand nine hundred and forty-two, to have had the force of law.

Saving.

4.—(1.) All decisions, variations and interpretations which the Women's Employment Board established under the National Security (Employment of Women) Regulations (being Statutory Rules 1942, No. 146, as amended by Statutory Rules 1942, Nos. 236, 263, 294, 381 and 393) gave or made or purported to give or make at any time up to and including the twenty-third day of September, One thousand nine hundred and forty-two, shall, by virtue of this Act, have full force and effect according to their tenor and, subject to this Act, the provisions, in the Schedule to this Act, relating to the employment of women shall apply to and in relation to those decisions, variations and interpretations in like manner as they apply to and in relation to decisions, variations and interpretations given or made under those provisions.

(2.) Any application under the regulations specified in the last preceding sub-section which was pending on the twenty-second day of September, One thousand nine hundred and forty-two, may be considered and decided by the Women's Employment Board established under the provisions, in the Schedule to this Act, relating to the employment of women, as if the application had been made under those provisions, and any evidence given, in relation to any such application, before the Women's Employment Board established under the regulations so specified, may be considered, in relation to that application, by the first-mentioned Board, as if the evidence had been given before it.

5. The provisions of the *National Security Act 1939-1940* shall, so far as applicable, apply to and in relation to the provisions, in the Schedule to this Act, relating to the employment of women, and to regulations made under this Act, in like manner as if they were regulations made under the first-mentioned Act.

Application of
*National
Security Act
1939-1940.*

6. The Governor-General may make regulations prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

Regulations.

- (a) the encouragement and regulation of the employment of women for the purpose of aiding the prosecution of the present war; and
- (b) the repeal or alteration of, or addition to, any of the provisions, in the Schedule to this Act, relating to the employment of women.

THE SCHEDULE.

Secs. 3, 4, 5, 6.

PROVISIONS RELATING TO THE EMPLOYMENT OF WOMEN.*

WOMEN'S EMPLOYMENT REGULATIONS.

1. These Regulations may be cited as the Women's Employment Regulations. Citation.
2. These Regulations shall be administered by the Minister of State for Labour and National Service. Administration
3. * * * * *
4. In these Regulations, unless the contrary intention appears— Definitions.
 - "determination" includes any determination or other decision of any authority of the Commonwealth or of a State having power to fix rates of payment for employees of the Commonwealth or of the State or of any authority of the Commonwealth or of the State, as the case may be;
 - "employer" includes the Crown (whether in right of the Commonwealth or of a State), and all instrumentalities or authorities of or under the Crown (whether in right of the Commonwealth or of a State);
 - "Industrial Authority" means any tribunal or person constituted by or under any law of the Commonwealth for the purpose of hearing and determining industrial disputes and making awards, orders or determinations 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;
 - "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar vehicle or engine, arms, armaments, ammunition, vehicle, bomb, torpedo, mine or other article, material or device (whether actual or proposed) intended or adapted for use in war;
 - "the Board" means the Women's Employment Board established under these Regulations;
 - "the Court" means the Commonwealth Court of Conciliation and Arbitration;
 - "the Secretary" means the Secretary, Department of Labour and National Service.
- 5.—(1.) For the purposes of these Regulations there shall be a Women's Employment Board consisting of a Chairman, one representative of the Commonwealth, one representative of employers other than the Commonwealth, and two representatives of employees. Establishment
of Women's
Employment
Board.
 - (2.) The members of the Board shall be appointed by the Minister.
 - (3.) Before appointing the representative of employers other than the Commonwealth, the Minister shall consult with the appropriate employers' organizations, and, before appointing the representative of employees, he shall consult with the Australasian Council of Trade Unions.

* These provisions, with the exception of the citation (regulation 1) and the omission of regulation 3 (the operation of which is exhausted), are identical with those of the *National Security (Employment of Women) Regulations* as amended to the 22nd September, 1942.

THE SCHEDULE—*continued.*

(4.) In the absence of any representative member of the Board the Minister shall appoint a substitute for the absent member, but, in the event of the substitute failing to attend a meeting of the Board to which he has been summoned by the Chairman, the Board may validly proceed in his absence.

(5.) The Chairman of the Board may, at his discretion, appoint from time to time (according to the subject-matter to be dealt with by the Board) two advisers, who shall sit with and advise the Board but shall not otherwise take any part in the decision of the Board on any application.

(6.) Of the advisers so appointed, one shall, if practicable, represent employers and one shall, if practicable, represent employees.

(7.) The Chairman and two other members of the Board shall form a quorum, and, when a quorum is present, the Board may validly function notwithstanding the absence of the representative or representatives of any party.

(8.) All questions before the Board shall be decided by a majority of votes :
Provided that where the Board is equally divided upon any question the matter shall be decided in accordance with the vote of the Chairman.

(9.) Subject to these Regulations, the Board may make rules governing its own procedure or in relation to applications to the Board.

Functions of Board.

5A. Without prejudice to anything contained in these Regulations, the functions of the Board shall be to fix the remuneration, hours and conditions of employment of certain women employed in industry during the emergency created by the present war.

Reference of applications to an Industrial Authority in Western Australia.

5B.—(1.) The Board may refer to an Industrial Authority of the State of Western Australia for consideration and decision the whole or any part of an application under these Regulations in relation to the employment of females in that State, and the Industrial Authority shall have, for the purposes of such consideration and decision, all the powers and functions of the Board and of the Chairman of the Board, and the provisions of these Regulations in relation to decisions of the Board shall apply as if the decision of the Industrial Authority were a decision of the Board.

(2.) In considering and deciding the application or part thereof, the Industrial Authority shall have regard to any decisions of the Board in respect of similar employment.

(3.) A copy of every decision of the Industrial Authority shall be forwarded forthwith to the Board, and the Board may review the decision within three months from the date of the decision.

(4.) On such review, the Board may confirm, vary or set aside the decision or any term thereof or may reconsider the whole or any part of the application and may make such decision thereon as if it had considered the application or part thereof in the first instance.

(5.) Any rate of payment to be made in accordance with any decision made by the Board on such review shall apply in respect of the work done by any female as on and from such date (whether before or after the commencement of this regulation, but, where that rate is less than the rate decided by the Industrial Authority, not earlier than the date of the decision of the Board, and, in any event, not earlier than the second day of March, 1942) as the Board specifies, but any payment made to that female in respect of the work prior to the date of the decision of the Board shall be set off against any payment to be made under the decision.

(6.) In this regulation—

“decision” includes variation or interpretation of a decision.

Application for permission to employ females.

6.—(1.) Where an employer has, since the second day of March, 1942, employed, is employing, or proposes to employ, females on work which is usually performed by males or work which was, prior to that employment of females, or is, performed by males in the establishment of that employer, or is work which, prior to that employment or proposed employment of females, was not being performed in Australia by any person, the employer shall, unless an application in relation to that employment has already been made, forthwith make application to the Board for a decision in accordance with this regulation.

(2.) A person who makes any such application shall forthwith furnish one copy thereof to the Secretary and one copy to such organization or to each of such organizations of employees and employers as the Chairman of the Board specifies.

(3.) Upon receipt of any such application the Board shall forthwith proceed to consider the application.

(4.) The Board, after consideration of the application, shall decide—

(a) whether the work specified in the application is work specified in sub-regulation (1.) of this regulation;

THE SCHEDULE—*continued.*

(b) in respect of the employment of females on work held in pursuance of these Regulations to be work specified in sub-regulation (1.) of this regulation—

- (i) whether females may be employed, or may continue to be employed, thereon ;
- (ii) the hours during which females may be employed thereon, and the maximum daily and weekly hours of work of females employed thereon ;
- (iii) the special conditions (if any) regarding the safety, health and welfare of females employed thereon to be observed by the employer ;
- (iv) whether the employment of females thereon should in the first place be on probation ;
- (v) if the Board decides that the employment should in the first place be on probation—
 - (1) the period of probation ; and
 - (2) during the period of probation, the rate of payment to be made to females employed on that work :

Provided that the rate of payment to be made to any adult female employee shall not be less than sixty per centum of the rate of payment made to adult males employed on work of a substantially similar nature ;

- (vi) the rate of payment to be made to females employed on that work, if the Board decides that the employment of females on that work should not in the first place be on probation, or after a period of probation determined in pursuance of these Regulations.

(4A.) Notwithstanding anything contained in these Regulations, where by or under any law of a State or Territory of the Commonwealth, the employment of females on work in or about any bar-room of any licensed premises is prohibited (whether absolutely or subject to specified exceptions), any decision of the Board (whether given before or after the commencement of this sub-regulation and whether given unconditionally or subject to conditions) that females may be employed on that work shall not, in so far as it is inconsistent with that law, have any force or effect unless and until the decision is approved by the Minister of State for Labour and National Service by order published in the *Gazette*.

In this sub-regulation, the expression "licensed premises" means premises in respect of which a licence for the sale or supply of intoxicating liquor is in force or deemed to be in force.

(5.) The Board shall decide a rate of payment under sub-paragraph (vi) of paragraph (b) of sub-regulation (4.) of this regulation which it considers to be just and proper in all the circumstances and shall, as far as is practicable, assess that rate by reference to such factors as it thinks fit and in particular to the efficiency of females in the performance of the work and any other special factors which may be likely to affect the productivity of their work in relation to that of males :

Provided that—

- (a) the rate of payment so decided for any adult female employee shall not be less than sixty per centum, nor more than one hundred per centum, of the rate of payment made to adult males employed on work of a substantially similar nature ; and
- (b) the rate of payment made to any female employee, or to females in respect of the performance of any work, not being a rate decided by the Board, shall not be reduced by any decision of the Board.

7. Any female employed on work specified in sub-regulation (1.) of regulation 6 of these Regulations, or any organization of employees to which any such female belongs, may make application to the Board for a determination of the rate of payment to be made to, or the hours and conditions to be observed in respect of, females employed on that work and the Board shall forthwith deal with the application as if it were an application under regulation 6 of these Regulations.

Application by female employee or organization of female employees.

8. The Board may, on the application of any party bound by a decision of the Board, or of its own motion—

- (a) vary the decision ;
- (b) re-open any question in relation to which the decision was given ;
- (c) give an interpretation of any term of the decision ; or
- (d) set aside the decision or any term of the decision.

Additional powers of Board.

THE SCHEDULE—continued.

Decisions of Board binding on parties to application.

9. Any decision of the Board, and any variation or interpretation of any such decision, shall be binding on the employer or employers specified in the decision, his employees and the organizations of employees whose members are affected by the decision, and shall be filed in the Court, and shall thereupon have effect in all respects and be enforceable as if it were an award or order of the Court.

Industrial Authority not to make award inconsistent with decision of Board.

10. During the currency of any decision of the Board no provision of any award, order or determination made by an Industrial Authority dealing with the subject-matter dealt with by the decision or any variation thereof and inconsistent with the decision or variation, and no decision or determination of any authority of the Commonwealth or a State with respect to female employees of the Commonwealth or State inconsistent with the decision of the Board or any variation thereof, shall be effective.

Employment of females in Department of Munitions, &c.

11.—(1.) Notwithstanding anything contained in these Regulations, or in any law or any instrument (including any award, order, determination or agreement) having effect by virtue of any law, any female may be employed in the Department of Munitions or the Department of Aircraft Production or, with the approval of the Director-General of Munitions or the Director-General of Aircraft Production, by any employer, on work reserved to males by any such law or instrument or work specified in sub-regulation (1.) of regulation 6 of these Regulations.

(2.) Within fourteen days after the commencement of the employment of a female on any such work, the Secretary of the Department concerned shall cause a notification to be furnished to the Board setting out fully the nature of the work on which the female is employed.

(3.) Any person who furnishes such a notification shall forthwith furnish one copy thereof to the Secretary and one copy to such organization or to each of such organizations of employees or of employers as the Chairman of the Board specifies.

(4.) Any such notification shall be dealt with as if it were an application under regulation 6 of these Regulations:

Provided that the Board shall not decide that females may not be employed on any such work.

(5.) Pending the making of a decision in consequence of any such notification, any female so employed shall be paid at a rate determined by the appropriate Minister of State.

Commencement of rate of pay.

12. Any rate of payment to be made in accordance with a decision, order or interpretation given or made by the Board in pursuance of these Regulations shall apply in respect of the work done by any female as on and from such date (whether before or after the commencement of these Regulations, but, where that rate is less than the rate payable immediately prior to the date of the decision, order or interpretation, not earlier than that date, and in any event, not earlier than the second day of March, 1942) as the Board specifies, but any payment made to that female in respect of the work prior to the date of the decision, order or interpretation of the Board shall be set off against any payment to be made under the decision, order or interpretation.

Inspection of premises.

13. Where, by virtue of these Regulations or of any decision made thereunder, a female is employed on work customarily performed by males, an accredited representative of any organization of employees referred to in sub-regulation (2.) of regulation 6 or sub-regulation (3.) of regulation 11 of these Regulations may inspect the premises in, and the work on which, that female is employed at any time during which the female is at work:

Provided that any such inspection shall be made—

- (a) only after notice for a reasonable period (not less than twenty-four hours) has been furnished to the employer of the female by the organization of employees or its accredited representative; and
- (b) in such manner as will not interfere with the performance of any work in the premises.

State factory laws not to apply in certain cases.

14.—(1.) Notwithstanding anything contained in the law of any State—

- (a) work may be performed by females in any factory or establishment engaged in the manufacture, production, repair or overhaul for war purposes of munitions of war; and
- (b) females may be employed on work in the factory or establishment, on such days and for such hours as the Minister, or a person authorized by him for the purposes of this regulation, approves.

(2.) The employment of any female under any approval so given shall be subject to the observance of such conditions regarding the safety, health and welfare of female employees as the Minister requires.

(3.) Before giving any approval under this regulation, the Minister or person so authorized shall consult with the appropriate organization of employees.

14A.—(1.) The Board may hear evidence, make inspections or otherwise inform itself in any manner that it thinks proper in the circumstances.

Manner in which Board may inform itself.

(2.) An employer shall allow to any member of the Board or to any person authorized by the Chairman of the Board full and free access to his premises for the purposes of these Regulations.

15.—(1.) For the purpose of the consideration and decision of matters in respect of any application under these Regulations, the Chairman of the Board shall have powers with respect to the summoning of witnesses before the Board and the taking of evidence of a like kind to those exercisable by the Court or the Chief Judge of the Court for the purpose of hearing and determining an industrial dispute of which the Court has cognizance.

Witnesses.

(2.) A person who has been summoned to appear or who has appeared before the Board as a witness shall not (without just cause, proof whereof shall lie upon him)—

(a) disobey the summons so to appear;

(b) refuse to be sworn or make affirmation as a witness;

(c) refuse to answer any question which he is required by the Chairman of the Board to answer; or

(d) refuse to produce any books or documents which he is required by the Chairman to produce.

16. The members of the Board and their substitutes (if any), and advisers appointed under sub-regulation (5.) of regulation 5 of these Regulations shall be paid such remuneration and travelling allowances as the Minister, by order, determines.

Fees and allowances to members.

STATUTE OF WESTMINSTER ADOPTION.

No. 56 of 1942.

An Act to remove Doubts as to the Validity of certain Commonwealth Legislation, to obviate Delays occurring in its Passage, and to effect certain related purposes, by adopting certain Sections of the Statute of Westminster, 1931, as from the Commencement of the War between His Majesty the King and Germany.

[Assented to 9th October, 1942.]

WHEREAS certain legal difficulties exist which have created doubts and caused delays in relation to certain Commonwealth legislation, and to certain regulations made thereunder, particularly in relation to the legislation enacted, and regulations made, for securing the public safety and defence of the Commonwealth of Australia, and for the more effectual prosecution of the war in which His Majesty the King is engaged:

Preamble.

AND WHEREAS those legal difficulties will be removed by the adoption by the Parliament of the Commonwealth of Australia of sections two, three, four, five and six of the Statute of Westminster, 1931, and by making such adoption have effect as from the commencement of the war between His Majesty the King and Germany: