

**PUBLIC SERVICE AND CROWN EMPLOYEES  
APPEAL BOARD (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

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**Act No. 86, 1974.**

An Act to make provisions with respect to the promotion of officers in the Public Service; to provide for the constitution of Promotions Appeal Tribunals and to define their powers, authorities, duties and functions; to remove certain matters from the jurisdiction of the Crown Employees Appeal Board constituted under the Crown Employees Appeal Board Act, 1944; for these and other purposes to amend the Public Service Act, 1902, and the Crown Employees Appeal Board Act, 1944; to amend the Public Service (Amendment) Act, 1972; and for purposes connected therewith. [Assented to, 10th December, 1974.]

**BE**

**No. 86, 1974** **BE** 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.** **1.** This Act may be cited as the "Public Service and Crown Employees Appeal Board (Amendment) Act, 1974".

**Commencement.** **2.** (1) This section and sections 1 and 3 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Amendment of Act No. 37, 1972.** **3.** The Public Service (Amendment) Act, 1972, is amended—

**Sec. 3.** (a) by omitting section 3 (1) and by inserting instead the following subsection:—

(1) This section shall commence upon the day appointed and notified under section 2 (2) of the Public Service and Crown Employees Appeal Board (Amendment) Act, 1974.

(b) by inserting in section 3 (2) after the matter "1902," the words "as in force immediately before the day referred to in subsection (1)".

**Amendment of Act No. 31, 1902.** **4.** The Public Service Act, 1902, is amended—

**Sec. 1.** (Short title.) (a) by inserting in section 1 after the matter relating to Part II the following matter:—

**PART IIA.—PROMOTIONS APPEALS—ss. 69A–69R.**

**DIVISION**

*Public Service and Crown Employees Appeal Board (Amendment).*

DIVISION 1.—*Chairmen of Promotions Appeal Tribunals*—ss. 69A–69F. No. 86, 1974

DIVISION 2.—*Constitution of Promotions Appeal Tribunals*—ss. 69G, 69H.

DIVISION 3.—*Appeals*—ss. 69I–69R.

- (b) by omitting from section 2 the words “the Schedule” Sec. 2.  
and by inserting instead the matter “Schedule 1”; (Repeal.)
- (c) (i) by inserting in section 4 (1) before the Sec. 4.  
definition of “Board” the following (Interpreta-  
tion.)  
definitions :—

“Administrative unit” means—

- (a) a department of the Government specified in a list;
- (b) a department of the Government specified in a list (other than an office so specified as not forming part of that department); or
- (c) an office specified in a list,

that list being a list in force under section 4A published in a notice in which that department, that department other than that office or that office, as the case may be, is declared to be an administrative unit.

“Association of employees” means an industrial union whose name for the time being is included in Schedule 2.

- (ii) by inserting in section 4 (1) after the definition of “Head of a branch” the following definition :—

“Industrial union” has the meaning ascribed to that expression by section 5 (1) of the Industrial Arbitration Act, 1940.

(iii)

No. 86, 1974

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- (iii) by inserting in section 4 (1) after the definition of "Prescribed" the following definition :—

"Public Service Board Notices" means any document titled "Public Service Board Notices" purporting to be published by the Government Printer under the authority of the Board.

- (iv) by inserting in section 4 (1) after the definition of "This Act" the following definition :—

"Tribunal" means a Promotions Appeal Tribunal constituted under section 69H and, in relation to an appeal made under Part IIA, means the Promotions Appeal Tribunal so constituted in respect of that appeal.

- (v) by inserting at the end of section 4 the following subsections :—

(3) The Governor may, by proclamation published in the Gazette, amend Schedule 2—

- (a) by inserting therein the name of any industrial union whose members, in the opinion of the Governor, consist of, or consist of a substantial number of, officers;
- (b) by omitting therefrom the name of any industrial union whose members, in the opinion of the Governor, no longer consist of a substantial number of officers; or

(c)

*Public Service and Crown Employees Appeal Board (Amendment).*

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(c) by omitting therefrom the name of any industrial union which has changed its name or has amalgamated with one or more other industrial unions if the industrial registrar under the Industrial Arbitration Act, 1940, has made the record required by that Act of the change or amalgamation and by inserting therein the changed name of the industrial union or the name of the industrial union which comprises the industrial unions which have amalgamated, as the case may require. No. 86, 1974

(4) Where the industrial registrar under the Industrial Arbitration Act, 1940, has made the record required by that Act of the change of name of an industrial union whose name, before the change, was included in Schedule 2 or of the amalgamation, with one or more other industrial unions, of an industrial union whose name, before the amalgamation, was included in that Schedule, the industrial union which bears the changed name or which comprises the industrial unions which have amalgamated, as the case may be, shall be deemed to be an association of employees within the meaning of this Act.

(5) A reference in this Act to the date of publication of the Public Service Board Notices is, in relation to any issue of that document, a reference to the date specified in that issue as the date of publication.

(6)

No. 86, 1974

(6) A document purporting to be an issue of the Public Service Board Notices is admissible in evidence in any proceedings, including proceedings before a Tribunal, and shall, until the contrary is proved, be deemed to be a copy of an issue of the Public Service Board Notices.

Sec. 4A. (d) by inserting after section 4 the following section :—

Administra-  
tive units.

4A. (1) The Board shall whenever by reason of any change occasion requires but at intervals of not more than six months cause to be published in the Public Service Board Notices a notice containing a list and declaring—

(a) that any department of the Government specified in the list;

(b) that any department specified in the list other than any office referred to in paragraph (c) and specified in the list as not forming part of that department; and

(c) that any office specified in the list, being an office in which officers are employed,

is an administrative unit for the purposes of this Act.

(2)

Public Service and Crown Employees Appeal Board (Amendment).

(2) Any list published in the Public Service Board Notices under subsection (1) ceases to be in force upon the next subsequent publication in the Public Service Board Notices of any such list. No. 86, 1974

(3) A copy of the Public Service Board Notices containing a list and declaration purporting to be a list and declaration referred to in subsection (1) is evidence that—

- (a) any department specified in the list;
- (b) any department specified in the list other than an office specified in the list as not forming part of that department; or
- (c) any office specified in the list,

as the case may be, was on the date of publication of the issue of the Public Service Board Notices containing the list and declaration an administrative unit for the purposes of this Act and has, in the absence of proof of the publication of a later issue of the Public Service Board Notices containing such a list and declaration, since remained at all material times such an administrative unit.

(e) by inserting at the end of section 19 the following subsection :—

(2) An officer who is entitled to appeal to a Tribunal against any decision or determination of the nature referred to in subsection (1) is not entitled to appeal to the Board in respect of that decision or determination.

Sec. 19.  
(Appeals to Board in respect of grade or classification.)

(f) (i) by omitting from section 20 (1) (j) the word "and";

Sec. 20.  
(General regulations.)

(ii)

No. 86, 1974

(ii) by inserting at the end of section 20 (1) the following paragraphs :—

(l) determining the seniority of officers within any group of officers referred to in section 20A (2);

(m) determining the seniority of officers whose salaries are equal.

Sec. 20A.

(g) by inserting after section 20 the following section :—

Seniority.

20A. (1) Except as provided in subsections (2) and (3), an officer is, for the purposes of this Act, senior to every other officer on a lower salary than that firstmentioned officer.

(2) The relative seniority of officers who are within a group of officers prescribed for the purposes of this subsection shall, for the purposes of this Act, be determined in accordance with the regulations made under section 20 (1) (1).

(3) An officer—

(a) who is within a group referred to in subsection (2) is, for the purposes of this Act, senior to any other officer who is within any other such group or who is not within any such group if that other officer is on a lower salary than that firstmentioned officer; and

(b) who is not within any group referred to in subsection (2) is, for the purposes of this Act, senior to any officer within any such group who is on a lower salary than that firstmentioned officer.

(4)



*Public Service and Crown Employees Appeal Board (Amendment).*

(4) Where, pursuant to this section, the relative seniority of officers is to be determined according to their salaries and two or more officers are on equal salaries, the relative seniority of those officers shall be determined in accordance with the regulations made under section 20 (1) (m). No. 86, 1974

- (h) by inserting after section 46 the following heading **Sec. 46A.** and section :—

*Secondments and temporary appointments.*

46A. As far as practicable having regard to the exigencies of the Public Service, the Board shall not, by way of secondment or temporary appointment, employ an officer to carry out the duties of a permanent office for a period in excess of six months. Restriction on secondment and temporary appointments.

- (i) by omitting from section 47 the words “, and shall be made with regard to special qualifications and aptitude, as well as to seniority in grade or duration of service, seniority being subordinated to considerations of special fitness”; Sec. 47. (Order of promotions, etc.)
- (j) (i) by omitting from section 48 (2) (a) the words “the amount ascertained in accordance with subsection (3) as applicable to him” and by inserting instead the words “the specified amount applicable to him”; Sec. 48. (Higher and lower grades.)
- (ii) by omitting from section 48 (2) (b) the words “the amount so ascertained” and by inserting instead the words “the specified amount applicable to him”;

(iii)

No. 86, 1974

(iii) by omitting section 48 (3) and by inserting instead the following subsection :—

(3) A reference in subsection (2) to the specified amount is a reference to such amount as may from time to time be determined by the Board, either generally or in respect of officers belonging to any specified class of officers.

Sec. 49.

(k) by omitting section 49 and by inserting instead the following section :—

Filling  
of vacant  
offices.

49. (1) In this section “efficiency”, in relation to an officer eligible for appointment to a vacant office, means—

(a) the possession by that officer of qualifications, determined by the Board in respect of that office, for the discharge of the duties of that office and his aptitude for the discharge of those duties; and

(b) the merit, diligence and good conduct of that officer.

(2) Where any vacancy exists in any office and the Board decides it is expedient to fill the vacancy, the Governor may, on the recommendation of the Board, appoint any officer to fill the vacant office.

(3)

*Public Service and Crown Employees Appeal Board (Amendment).*

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(3) In deciding to make a recommendation No. 86, 1974 under subsection (2), the Board shall, out of the group of officers eligible for appointment to the vacant office, prefer—

- (a) the officer whose efficiency is, in the opinion of the Board, greater than that of any other officer in that group; or
- (b) where, in the opinion of the Board, there is no officer in that group entitled to preference under paragraph (a), the officer who, under section 20A, is senior to any other officer in that group.

(4) The reference in subsection (3) to an officer being eligible for appointment to a vacant office is a reference—

- (a) except as provided in paragraph (b), to an officer holding an office in the administrative unit in which the vacant office exists at the time the decision of the Board is made; or
- (b) where an invitation to apply for appointment to the vacant office was published in the Public Service Board Notices or in a newspaper, to any officer who duly made application for appointment to the vacant office.

**(5)**

*Public Service and Crown Employees Appeal Board (Amendment)*

No. 86, 1974

(5) A recommendation which the Board under subsection (2) has decided to make shall not be acted upon under that subsection until the expiration of the time for lodging a notice of appeal under Part IIA against the Board's decision to make that recommendation or where such a notice of appeal is lodged within that time until the appeal is determined under that Part.

(6) Nothing in this section affects the power of the Governor to make an appointment under section 35 or of the Board—

(a) to employ a person under section 44; or

(b) under any other provision of this Act.

Sec. 49A.

(1) by omitting section 49A and by inserting instead the following section :—

Publica-  
tion of  
Board's  
decisions  
to make  
recom-  
mendations  
under  
section  
49 (3).

49A. (1) The Board shall cause to be published in the Public Service Board Notices at intervals of not more than one month brief particulars in a form determined by the Board of any decision, made under section 49 (3), of the Board to make a recommendation to the Governor to appoint any officer to fill a vacant office, particulars of which have not previously been published in the Public Service Board Notices in accordance with this subsection.

(2)

Public Service and Crown Employees Appeal Board (Amendment).

(2) Any officer who is proceeding on duty outside the State for a period exceeding six weeks or on leave for a period exceeding six weeks and who has made application, in a form prescribed by regulations made by the Board for the purposes of this subsection, to the person in charge of the administrative unit of which the office held by that officer forms part is entitled to have sent to him during that period by that person in charge, by pre-paid post addressed to him at the address specified in that application, a copy of all Public Service Board Notices published during that period. No. 86, 1974

- (m) (i) by omitting from section 50 (1) the words “passed the examination prescribed by the Board as preliminary to admission to those grades” and by inserting instead the words “obtained the appropriate qualification”;
- (ii) by inserting after section 50 (1) the following subsection :—

(1A) In subsection (1), “the appropriate qualification”, in relation to either of the divisions referred to in that subsection, means whichever of the following qualifications is determined by the Board in respect of that division :—

- (a) the qualification obtained by passing the examination referred to in subsection (2) for promotion to the higher grades of that division;
- (b) the qualification obtained by passing such examinations conducted by such institutions as may be determined by the Board, in respect of that division;
- or

(c)

No. 86, 1974

(c) the qualification referred to in paragraph (a) together with the qualification referred to in paragraph (b).

(iii) by omitting from section 50 (2) the words “, and the names of the persons who have passed the required standard of examination shall be registered by the Board, and all vacancies in the higher series of grades in the two divisions mentioned which it may be considered expedient to fill, and which subject to the provisions of this Act may be filled from a lower series of grades shall be filled by the appointment of those officers whose names appear in the register aforesaid”;

**Sec. 51.**  
(Board may allow officer to decline promotion.)

(n) by omitting from section 51 the words “his right to any future promotion or appointment to which his grade and order of seniority and merit would, under the provisions of this Act, entitle him” and by inserting instead the words “any future promotion or appointment for which he may be eligible for consideration”;

Part II.A.

(o) by inserting after section 69 the following Part :—

**PART II.A.**

**PROMOTIONS APPEALS.**

**DIVISION 1.—Chairmen of Promotions Appeal Tribunals.**

**Interpretation.**

69A. In this Part—

“appeal” means an appeal made under this Part;

“chairman” means a chairman of Promotions Appeal Tribunals appointed under this Part;

“decision

***Public Service and Crown Employees Appeal Board (Amendment).***

“decision of the Board” means a decision of the Board to make a recommendation referred to in section 49 (2);

“efficient” has a meaning corresponding to the meaning ascribed to the expression “efficiency” by section 49 (1);

“recommended officer” means the officer whom the Board, pursuant to section 49 (2), decides to recommend for appointment to a vacant office;

“registrar” means the registrar appointed under section 69F and includes any person for the time being acting as registrar;

“senior chairman”—

- (a) except as provided in paragraph (c), where one person holds office under section 69B (1)—means that person;
- (b) except as provided in paragraph (c), where two or more persons hold office under section 69B (1)—means such one of those persons as is appointed to be the senior chairman under section 69B (2); and
- (c) during any period during which a person is appointed to act in the office of senior chairman under section 69B (9)—includes that person.

69B. (1) The Governor may appoint such number of persons to be chairmen of Promotions Appeal Tribunals as he considers necessary for the prompt consideration and determination of appeals under this Part.

Chairmen of  
Promotions  
Appeal  
Tribunals.

(d)

(2)

No. 86, 1974

(2) Where two or more persons hold office as chairmen, one of them shall, by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed to be the senior chairman.

(3) The senior and any other chairman shall be paid such remuneration and allowances as the Governor may from time to time determine in respect of him.

(4) The senior chairman appointed under subsection (2) shall devote the whole of his time to the duties of his office.

(5) The senior chairman shall, subject to this Part, hold office as chairman for a term not exceeding five years.

(6) A chairman, other than the senior chairman, shall, subject to this Part, hold office as chairman for such term, not exceeding five years, as may be specified in the instrument of his appointment.

(7) The senior or any other chairman is, if otherwise qualified, eligible for re-appointment from time to time on the expiry of his term of office.

(8) Any such re-appointment shall—

(a) in the case of the re-appointment of a person as senior chairman, be for a term of five years; and

(b)



Public Service and Crown Employees Appeal Board (Amendment).

(b) in the case of the re-appointment of a person No. 86, 1974 as a chairman, other than the senior chairman, be for such term not exceeding five years as may be specified in the instrument of re-appointment.

(9) The Governor may appoint a person to act in the office of senior chairman during the absence of the senior chairman from his office through illness or other cause and the person so appointed shall while so acting be deemed to be the senior chairman and shall have the powers, authorities, duties and functions of the senior chairman and be entitled to such remuneration and allowances as the Governor may from time to time determine in respect of him.

(10) A person who is of or above the age of sixty-five years shall not be appointed as senior chairman or as any other chairman or be appointed under subsection (9).

(11) The provisions of this Act, other than this Part, do not apply to or in respect of the appointment of a chairman, the senior chairman or a person appointed under subsection (9) to act in the office of senior chairman and any such person is not, in his capacity as chairman, senior chairman or person so acting, subject to the provisions of this Act other than this Part.

69c. (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act. Preservation of certain rights of chairmen.

(2) The fact that a person appointed as a chairman, other than the senior chairman appointed under section 69B (2) or a person appointed under section 69B (9), does not, by reason of his acting

as

No. 86, 1974

as a chairman, devote the whole of his time to the duties of some office, other than the office of chairman, held by him, prevent that person from being an employee or servant within the meaning of any superannuation scheme, but any remuneration or allowances paid to him as a chairman shall be deemed not to be part of his salary for the purposes of that scheme.

(3) Subject to subsection (4) and to the terms of his appointment, where the senior chairman was, immediately before his appointment as senior chairman under section 69B (2)—

- (a) an officer of the Public Service; or
- (b) a contributor to a superannuation scheme, he—
- (c) shall retain any rights accrued or accruing to him as such an officer or contributor;
- (d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as senior chairman; and
- (e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or contributor during his service as senior chairman, and—

- (f) his service as senior chairman shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (g)

*Public Service and Crown Employees Appeal Board (Amendment).*

(g) he shall be deemed to be an officer or employee and the Minister shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subsection. No. 86, 1974

(4) Where the senior chairman would, but for this subsection, be entitled under subsection (3) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he shall not be so entitled upon his becoming (whether upon his appointment as senior chairman or at any later time while he holds office as senior chairman) a contributor to any other superannuation scheme, and the provisions of subsection (3) (g) cease to apply to or in respect of him and the Minister in any case where he becomes a contributor to such another superannuation scheme.

(5) Subsection (4) does not prevent the payment to the senior chairman upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(6) The senior chairman shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

69D. A person who was, immediately before his appointment as senior chairman, an officer and who ceases to be senior chairman, otherwise than pursuant to section 69E (1) (paragraph (h) excepted) or section 69E (2), shall, if he is under the age of sixty years, be entitled to be appointed Senior chairman entitled to re-appointment to Public Service in certain cases.

to

**No. 86, 1974**

to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as senior chairman.

**Casual  
vacancy.**

69E. (1) A chairman or person appointed under section 69B (9) shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if, being the senior chairman or person so appointed, he engages in any paid employment outside the duties of his office while he holds office or acts as senior chairman;
- (c) if, being the senior chairman or person so appointed, he absents himself from duty for a period exceeding fourteen consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant);
- (d) if, being a chairman other than the senior chairman, he absents himself from duty without the authority of the senior chairman;
- (e) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or expenses as a referee, or of his estate, for their benefit;
- (f) if he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (g)

Public Service and Crown Employees Appeal Board (Amendment).

- (g) if he is convicted in New South Wales of a felony or of a misdemeanour punishable by imprisonment for twelve months or longer, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or misdemeanour so punishable;
- (h) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation;
- (i) if he is removed from office by the Governor; or
- (j) on the day on which he attains the age of sixty-five years.

(2) The Governor may, for any cause which to him seems sufficient, remove a chairman or person appointed under section 69B (9) from office.

69F. A registrar of Promotions Appeal Tribunals and such other persons as may be required for the proper administration of this Part shall be appointed under and subject to this Act. Registrar and other staff.

**DIVISION 2.—***Constitution of Promotions Appeal Tribunals.*

69G. (1) Where a notice of appeal is lodged in accordance with section 69I against a decision of the Board, the registrar shall, as soon as practicable after the expiration of the period within which a notice of appeal may, under section 69I (2) (a), be lodged against that decision— Procedure on appeals.

- (a) arrange with the senior chairman a time, date and place for the consideration and determination of the appeals against that decision; and

(b)

No. 86, 1974

(b) by notification in writing, inform—

- (i) the Board, the appropriate association of employees and the appellant of the time, date and place arranged for the consideration and determination of the appeals; and
- (ii) the Board and the appropriate association of employees of particulars of the appeals.

(2) The particulars referred to in subsection (1) are particulars setting forth, in respect of each appeal, the name and address of the appellant, the vacant office in respect of which the notice of appeal is lodged, a brief statement of the grounds of appeal specified in the notice of appeal lodged by each appellant and such other particulars as the senior chairman directs either generally or in a particular case.

(3) A reference in subsection (1) to the appropriate association of employees is a reference—

- (a) where only one notice of appeal is lodged in respect of the decision of the Board appealed against—
  - (i) if the appellant has indicated in his notice of appeal that he is a member of only one association of employees—to that association of employees; or
  - (ii) except as provided in subparagraph (i)—to such association of employees as the senior chairman determines; and

(b)

*Public Service and Crown Employees Appeal Board (Amendment).*

(b) where two or more notices of appeal are lodged in respect of the decision of the Board appealed against—

- (i) if each of the appellants has indicated in his notice of appeal that he is a member of the one association of employees and none of them is a member of any other such association—to that one association of employees; or
- (ii) except as provided in subparagraph (i)—to such association of employees as the senior chairman determines.

69H. (1) A Tribunal for the consideration and determination of all appeals against a decision of the Board shall consist of the following members :—

Constitution of Promotions Appeal Tribunal.

- (a) a chairman selected by the senior chairman;
- (b) an officer selected by the Board, who shall be the employer's representative; and
- (c) an officer selected by the association of employees to which a notification in respect of the appeals is given under section 69G (1) (b), who shall be the officers' representative,

but if an officer referred to in paragraph (c) is not present, or has not taken and subscribed to the oath set out in subsection (2), at the time, on the date and at the place specified in the notification given under section 69G (1) (b) (i) in respect of those appeals, the chairman may select any officer to be a member of the Tribunal for the

consideration

*Public Service and Crown Employees Appeal Board (Amendment).*

No. 86, 1974

consideration and determination of those appeals and the person selected by the chairman shall be a member of that Tribunal in the place of the officer referred to in paragraph (c).

(2) A person shall not act as a member of a Tribunal unless he has taken and subscribed to an oath in the following form :—

I, ....., do swear that when acting as a member of any Promotions Appeal Tribunal I will faithfully and diligently discharge my duties as a member of that Tribunal.

(3) Sections 11, 11A and 12 of the Oaths Act, 1900, apply to and in respect of an oath set out in subsection (2) as if it were an oath required to be taken under Part II of that Act.

*DIVISION 3.—Appeals.*

Right of appeal.

69I. (1) Subject to and in accordance with the provisions of this Division, an officer may, by lodging with the registrar a notice of appeal in a form approved by the senior chairman, appeal to a Tribunal against a decision of the Board on either or both of the following grounds :—

(a) that he is more efficient than the recommended officer;

(b)



*Public Service and Crown Employees Appeal Board (Amendment).*

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- (b) that he is equally as efficient as the recommended officer and is senior to that officer. No. 86, 1974  
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(2) An officer is not entitled to appeal to the Tribunal against a decision of the Board—

- (a) unless notice of the appeal is lodged with the registrar—
- (i) except as provided in subparagraph (ii)—within thirty days;
  - (ii) where the appellant is an officer who is entitled, pursuant to an application made by him under section 49A (2), to have sent to him copies of the Public Service Board Notices—within forty days,

after the date of publication, in accordance with section 49A (1), of the particulars of the decision appealed against;

- (b) unless the appellant is willing to take up duties in the vacant office;
- (c) unless the maximum salary applicable to the vacant office exceeds the maximum salary applicable to the office held by the appellant;

(d)

*Public Service and Crown Employees Appeal Board (Amendment).*

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No. 86, 1974

- (d) unless, where an invitation to apply for appointment to the vacant office was published in the Public Service Board Notices or in a newspaper, the appellant duly made application for appointment to the vacant office or had reasonable cause for failing to do so;
  
- (e) unless the maximum salary applicable to the vacant office is greater than the maximum salary applicable to the office held by the recommended officer;
  
- (f) if the maximum salary applicable to the vacant office at the date of the decision appealed against exceeds—
  - (i) except as provided in subparagraph (ii)—the amount equal to the maximum salary applicable to an office graded Grade 10 in the Administrative and Clerical Division; or
  - (ii) where another amount is prescribed—that other amount; or
  
- (g) if the vacant office is in the Special Division.

(3) Nothing in subsection (2) (a) (i) or (ii) prevents an officer from appealing to a Tribunal against a decision of the Board particulars of which have not, in accordance with section 49A (1), been published.

(4)

Public Service and Crown Employees Appeal Board (Amendment).

(4) The registrar shall, at the request of any officer proposing to make an appeal under this section, furnish free of charge to that officer a form of notice of appeal as approved by the senior chairman. No. 86, 1974

(5) Where an invitation to apply for appointment to a vacant office has not been published in the Public Service Board Notices or in a newspaper, only officers in the same administrative unit of which the vacant office forms part are entitled to appeal against the Board's decision to recommend an appointment to that office.

69J. (1) At or as soon as practicable after the time specified in the notifications given under section 69G (1) (b) in respect of appeals against a decision of the Board, the Tribunal constituted under section 69H in respect of those appeals shall consider and determine those appeals. Consideration of appeal.

(2) The Tribunal which considers an appeal may allow or disallow the appeal.

(3) The burden of proving any ground on which an appellant appeals lies upon the appellant.

(4) An appellant against a decision of the Board may at any time withdraw his appeal, whether or not a Tribunal has commenced to consider the appeal—

- (a) where the consideration of appeals against that decision has not commenced, by notifying the registrar in writing that he withdraws the appeal; or
- (b) where the consideration of appeals against that decision has commenced, by informing the Tribunal that he withdraws his appeal.

69K.

*Public Service and Crown Employees Appeal Board (Amendment).*

**No. 86, 1974**

**Adjourn-  
ment.**

69K. (1) A Tribunal may from time to time adjourn its consideration of any appeals to such times, dates and places and for such reasons as it thinks fit.

(2) In the absence of one or two members of a Tribunal, the remaining member or members may exercise the Tribunal's powers under subsection (1).

**Decision  
of  
Tribunal.**

69L. Each member of a Tribunal shall have one vote and the decision of the majority of the members of a Tribunal on an appeal shall be the decision of that Tribunal.

**Appear-  
ances.**

69M. (1) An appellant is entitled to be present before the Tribunal considering his appeal while any matter is being presented by him or the Board to the Tribunal in relation to his appeal.

(2) The Board is entitled to be present, by an officer appointed by the Board, either generally or in respect of appeals against a particular decision of the Board, before a Tribunal while any matter is being presented to the Tribunal.

(3) An appellant against a decision of the Board and, by an officer, the Board shall be entitled to adduce, orally or in writing, to the Tribunal considering the appeal against that decision such matters, and to address that Tribunal on such matters, as are relevant to the appeal.

(4) A recommended officer is entitled to be present during the consideration of the appeals against the decision of the Board to recommend him and, if the chairman so permits, to adduce, orally or in writing, to the Tribunal considering the appeals such matters, and to address that Tribunal on such matters, as are relevant to the appeal.

(5) Subject to subsection (6), a person or body entitled to be present before a tribunal is not entitled to be represented by counsel, solicitor,

agent

*Public Service and Crown Employees Appeal Board (Amendment).*

agent or otherwise, but nothing in this subsection affects the right of the Board to appear before a Tribunal by an officer. **No. 86, 1974**

(6) An appellant against a decision of the Board is entitled to have present with him at the hearing of his appeal a person appointed by him and, with the leave of the Tribunal, to be represented at the hearing by such a person.

(7) The officer by whom the Board is present at a hearing of an appeal is entitled to have present with him at the hearing of the appeal a person appointed by that officer.

(8) An instrument in writing signed by a person purporting to be a member of the Board and stating that a person specified in the instrument is an officer appointed under subsection (2) is admissible in evidence in any proceedings, including proceedings before a Tribunal and, in the absence of proof to the contrary, is proof of the matters so stated.

69N. (1) Subject to this Act, the procedure before a Tribunal shall be in accordance with any directions given to it by the senior chairman and in the absence of any such directions as may be determined by the Tribunal. **Procedure before Tribunals.**

(2) The proceedings before a Tribunal shall be open to the public unless the Tribunal otherwise directs in respect of the proceedings or any part of the proceedings.

69O. (1) A Tribunal is not bound by the rules or practice as to evidence and may inform itself of any matter in such manner as it thinks fit. **Evidence.**

(2) A Tribunal may, by instrument in writing under the hand of the chairman of the Tribunal require any officer or employee—

(a) to appear before it and to give evidence; or

(b)

*Public Service and Crown Employees Appeal Board (Amendment).*

No. 86, 1974

(b) to produce any document including any document in which the efficiency, as defined in section 49 (1), of the recommended officer or any appellant appearing before the Tribunal is assessed or commented upon.

(3) An officer or employee who fails or neglects to comply with a requirement made of him under subsection (2) is guilty of an offence against this Act and liable on conviction before a stipendiary magistrate or any two justices sitting in petty sessions to a penalty not exceeding \$200.

(4) Any member of a Tribunal may administer an oath to any person giving evidence before that Tribunal.

Record of proceedings.

69p. (1) Proceedings before a Tribunal shall be recorded in such manner as the senior chairman directs but any such record which is made by means of shorthand, stenotype machine or sound-recording apparatus shall not be transcribed unless the appellant or a member of the Tribunal requests the registrar to supply a transcription of the recording. the senior chairman directs that the recording be transcribed or the transcription is otherwise required by law.

(2) Any transcription so made may be supplied to a member of the Tribunal or the senior chairman without payment of any fee or to the appellant or recommended officer concerned upon payment to the registrar of a fee corresponding to the fee referred to in section 73 (2) of the Justices Act, 1902, for copies of depositions.

(3) Where the registrar is satisfied that any such transcription was so supplied and proceedings on the appeal to which the transcription relates have been commenced in a superior court, he shall, upon application by the person who paid the fee, refund the fee to that person.

(4)

*Public Service and Crown Employees Appeal Board (Amendment).*

(4) Where within six months after an appeal is determined no transcription of the proceedings before the Tribunal on that appeal has been made under subsection (1), the record of those proceedings may be destroyed.

No. 86, 1974

69Q. (1) The decision of a Tribunal on any appeal under this Part shall be final and shall be given effect to by the Board.

Decisions of  
Tribunals  
final.  
cf. Act No.  
15, 1944,  
s. 13.

(2) No decision or proceeding of a Tribunal shall be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court.

(3) No proceeding for an order in the nature of prohibition or certiorari shall lie in respect of any decision or proceeding of a Tribunal relating to any appeal under this Part.

69R. Any notification or other document which, by this Part, is required or authorised to be given to any person or to the Board may be given—

Service of  
notifications,  
etc.

- (a) in the case of a person, other than the Board—by delivering it to him personally or by sending it by pre-paid post addressed to him at the address of the administrative unit in which he is employed or at the last known address of his place of residence; and
- (b) in the case of the Board—by delivering it to the Secretary of the Board personally or by sending it by pre-paid post to the Board addressed to the Board at the office of the Secretary of the Board.

(p)

*Public Service and Crown Employees Appeal Board (Amendment).*

No. 86, 1974 (p) by inserting after the Schedule the following  
Schedule 2. Schedule :—

## SCHEDULE 2.

Public Service Association of New South Wales.  
New South Wales Public Service Professional Officers  
Association.  
New South Wales Nurses' Association.  
The Health and Research Employees' Association of  
Australia.  
The New South Wales Teachers' Federation.

Amend-  
ment of Act  
No. 15,  
1944. 5. The Crown Employees Appeal Board Act, 1944, is  
amended—

Sec. 10. (a) by omitting from section 10 (1) the following  
(Appeals to words :—  
Board.)

(ii) where the office to be filled has been  
declared, pursuant to the Public Service Act,  
1902, as amended by subsequent Acts, to be  
in the Special Division:

(b) by inserting at the end of section 10 (1) the  
following proviso :—

Provided further that a person shall not be entitled  
to appeal to the Board against a decision or  
determination if he is entitled to appeal against that  
decision or determination under Part IIA of the  
Public Service Act, 1902.

Savings. 6. An appeal against any decision or determination made  
by the Public Service Board before the day appointed and  
notified under section 2 (2) may be made, continued and  
completed, and shall be given effect to, in all respects as if this  
Act had not been enacted and as if section 20A of the Public  
Service Act, 1902, as in force immediately before that day had  
continued in force.