

**GOVERNMENT AND RELATED EMPLOYEES APPEAL
TRIBUNAL (AMENDMENT) ACT 1986 No. 156**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 39, 1980
5. Amendment of Act No. 4, 1976, Sch. 2 (Public Offices)
6. Savings and transitional provisions

SCHEDULE 1—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
PRESIDING MEMBERS OF THE TRIBUNAL

SCHEDULE 3—SAVINGS AND TRANSITIONAL PROVISIONS

**GOVERNMENT AND RELATED EMPLOYEES APPEAL TRIBUNAL
(AMENDMENT) ACT 1986 No. 156**

NEW SOUTH WALES



Act No. 156, 1986

An Act to amend the Government and Related Employees Appeal Tribunal Act 1980 with respect to the commencement and hearing of promotions appeals; and for other purposes. [Assented to, 17 December 1986]

Government and Related Employees Appeal Tribunal (Amendment) 1986

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 "Government and Related Employees Appeal Tribunal (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Schedule 1 (2) and (6), and section 4 in its application to those provisions, shall be deemed to have commenced on 1 September 1980.

(3) Except as provided by this section, this Act shall commence on 1 January 1987.

Principal Act

3. The Government and Related Employees Appeal Tribunal Act 1980 is referred to in this Act as the Principal Act.

Amendment of Act No. 39, 1980

4. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

Amendment of Act No. 4, 1976, Sch. 2 (Public Offices)

5. The Statutory and Other Offices Remuneration Act 1975 is amended by omitting from Part 1 of Schedule 2 the words "Chairman of the Government and Related Employees Appeal Tribunal" and by inserting instead the words "Chairperson of the Government and Related Employees Appeal Tribunal".

Savings and transitional provisions

6. Schedule 3 has effect.

SCHEDULE 1

(Sec. 4)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 19—

Omit the section, insert instead:

Publication of notices

19. (1) An employer, having made a decision to appoint or recommend the appointment of a person to fill a vacant office or position in the establishment of the employer, shall—

- (a) in the case of an employer who is a Department Head within the meaning of section 4 (1) of the Public Service Act 1979, if the person appointed or whose appointment is recommended is an officer within the meaning of that subsection; or
- (b) in the case of any other employer, if the person appointed or whose appointment is recommended is an employee of the employer,

cause particulars of the decision to appoint or recommend the appointment of the person to be published, not later than 14 days after acceptance by the person of the appointment, in a notice and cause the notice to be distributed to the employees of the employer.

(2) When a person has accepted an appointment, the employer shall cause notice in writing of—

- (a) the fact of that person's acceptance;
- (b) the fact of publication of any notice given under subsection (1); and

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(c) the date of any notice referred to in paragraph (b).

to be given, not later than 14 days after that acceptance, to every other person who applied unsuccessfully for the appointment (other than a person who withdrew his or her application).

(3) If, by or under any other Act, an employer is required to give notice of the particulars of a decision of the kind referred to in subsection (1), any such notice shall be deemed to be a notice under subsection (1) if given within the time limited by that subsection.

(4) A notice under subsection (1) (other than a notice to which subsection (3) or (5) applies) shall, where a form is prescribed, be in or to the effect of the prescribed form.

(5) The Senior Chairperson may, on application by an employer, permit notification under subsection (1) to be given to the employer's employees in an approved form.

(2) Section 20—

Omit the section, insert instead:

Right of appeal

20. Subject to and in accordance with this Part—

- (a) an employee, being an officer within the meaning of section 4 (1) of the Public Service Act 1979, may appeal to the Tribunal against a decision of an employer, being a Department Head within the meaning of that subsection, to appoint or recommend the appointment of another such officer to fill a vacant office; and
- (b) an employee, not being an officer within the meaning of section 4 (1) of the Public Service Act 1979, may appeal to the Tribunal against a decision of the employer's employer to appoint or recommend the appointment of another employee of that employer to fill a vacant office,

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

on the ground that the appellant is, having regard to the provisions of any Act, statutory instrument, industrial award or agreement or any advertisement published in good faith in relation to the vacant office, being an Act, statutory instrument, industrial award or agreement or advertisement which is required to be applied or taken into consideration by the employer in respect of an appointment to the vacant office, more entitled to be appointed to the vacant office than the employee in whose favour the decision was made.

(3) Section 21 (**Excluded circumstances**)—

Section 21 (1) (d) (i)—

Omit “an office graded Grade 11”, insert instead “a position graded Grade 12”.

(4) Section 29—

Omit the section, insert instead:

Time for lodging appeal

29. (1) Notice of an appeal under section 20 shall be lodged—

(a) within 21 days after the date borne by a notice of particulars under section 19 (1); or

(b) within 21 days after receipt by the employee of a notice under that subsection which bears no date.

(2) Notice of an appeal under section 24 shall be lodged within 28 days after the employee is notified of the decision against which the appeal is to be made.

(3) Nothing in this section prevents an employee from appealing against a decision which was not notified, or particulars of which were not notified, to the employee as required by or under this or any other Act.

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued(5) Section 30 (**Appointment of agents**)—

(a) Section 30 (1) (a) (ii), (2) (a)—

Omit “19 (3)” wherever occurring, insert instead “19 (5)”.

(b) Section 30 (1) (b)—

After “appeal”, insert “and accepting service of any notice under section 47A”.

(6) Section 31 (**Arrangements for hearing appeals**)—

Section 31 (1)–(1C)—

Omit section 31 (1), insert instead:

(1) On receipt of a notice of appeal lodged in accordance with this Act against the decision of an employer, the Senior Chairperson, as soon as practicable after the expiration of the period within which a notice of appeal may, under section 29, be lodged against that decision—

(a) shall consider whether any issue of law or procedure arises in relation to the appeal which should be dealt with prior to, or without proceeding to, a hearing of the appeal;

(b) may determine that—

(i) the Senior Chairperson, sitting alone; or

(ii) a Chairperson, sitting alone, selected by the Senior Chairperson,

shall deal with any such issue; and

(c) may, generally or in any particular case or class of cases, determine the procedure to be adopted in dealing with any such issue.

(1A) The issue shall be dealt with in accordance with the relevant determinations under subsection (1).

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(1B) The decision of the Senior Chairperson or a Chairperson with respect to the issue shall be the decision of the Tribunal, and proceedings before the Senior Chairperson or Chairperson for the purpose of enabling such a decision to be made shall be deemed to be proceedings of the Tribunal.

(1C) If, in relation to an appeal—

- (a) the Senior Chairperson considers that there is no issue of law or procedure which should be dealt with prior to, or without proceeding to, a hearing of the appeal; or
- (b) any such issue has been dealt with in accordance with subsection (1A),

the Senior Chairperson shall, except where it has been decided not to proceed to a hearing—

(c) determine that—

(i) the Senior Chairperson shall preside as chairperson;
or

(ii) a Chairperson selected by the Senior Chairperson shall preside as chairperson,

at the sitting of the Tribunal for the purpose of hearing the appeal;

(d) appoint a time, date and place for the hearing of the appeal; and

(e) notify the Registrar of the arrangements made under paragraphs (c) and (d).

(7) Section 32 (**Notification of arrangements**)—

Section 32 (1)—

Omit “31 (1)”, insert instead “31 (1C)”.

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(8) Section 35—

Omit the section, insert instead:

Sittings relating to promotions appeals

35. (1) Except as provided by subsection (2), a sitting of the Tribunal for the purpose of hearing an appeal under section 20 shall be informal.

(2) A sitting of the Tribunal for the purpose of hearing an appeal under section 20 shall be formal if the Senior Chairperson or presiding Chairperson, being satisfied that there is good and sufficient reason for the sitting to be formal, so determines.

(3) A determination of the Senior Chairperson or presiding Chairperson for the purposes of subsection (2) may be made on his or her own motion or on the application of a party to the appeal.

(4) An application referred to in subsection (3) may be made before or at any time during the hearing.

(9) Section 37 (**Provisions relating to informal sittings**)—

(a) Section 37 (4) (a)—

Before “may”, insert “being a person referred to in subsection (2) (a) or (c),”.

(b) Section 37 (4) (a1)—

After section 37 (4) (a), insert:

(a1) being a person referred to in subsection (2) (b), may adduce in writing to the Tribunal such matters as are relevant to the appeal and may, at the request of the Tribunal, address the Tribunal, otherwise than in writing, on any matter;

(10) Section 38 (**Provisions relating to formal sittings**)—

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

Section 38 (4)—

Omit “counsel, solicitor or agent or otherwise”, insert instead “any other person (not being counsel or a solicitor) and may, with leave granted at the discretion of the Senior Chairperson or presiding Chairperson, be represented by counsel or a solicitor”.

(11) Section 41 (**Votes of members**)—

Section 41 (2)—

Before “subsection (3)”, insert “section 31 (1B) and”.

(12) Section 47A—

After section 47, insert:

Termination of listing

47A. (1) If an appeal has been pending for more than 6 months after notice of the appeal was lodged and the Tribunal has not commenced to hear the matter, the Registrar may by notice in writing served on the appellant require the appellant to show cause before the Registrar, at a time, date and place specified in the notice, why the appeal should not be struck out.

(2) The Registrar—

- (a) upon failure of the appellant to appear in response to the notice; or
- (b) not being satisfied that sufficient cause has been shown as required by the notice,

may, by order signed by the Registrar, strike out the appeal and, in that event, shall in due course so notify the parties to the appeal.

(13) Schedule 2 (**Provisions relating to the nomination of employers' representatives and employees' representatives**)—

(a) Clause 1 (1)—

Omit “12”, insert instead “40”.

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 1—*continued*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—
continued

(t) Clause 6A—

After clause 6, insert:

Retired persons

6A. (1) For the purposes of clauses 3–6, in so far as those provisions designate, by reference to an office or position of employment, the necessary qualification for nomination of a person as a representative, a person who, although retired, held such an office or position immediately before retirement shall be deemed to be suitably qualified.

(2) For the purposes of clause 11 (1), in comparing the qualifications of a person who vacates office with those of a person who may be nominated to replace that person, no distinction shall be drawn between the holder of an office or position and a person who held such an office or position immediately before retirement.

SCHEDULE 2

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PRESIDING
MEMBERS OF THE TRIBUNAL

- (1) Sections 4, 5 (2), 7-13, 15 (2), 23, 31 (2), 32 (2) (d), 33 (1), 37, 39-41, 44 (1), 48 (4), 49, 52, 53—

Omit "Chairman" wherever occurring, insert instead "Chairperson".

- (2) Section 4 (11)—

After section 4 (10), insert:

(11) The Senior Chairperson or a Chairperson may be referred to as the Senior Chairman, Senior Chairwoman, Chairman or Chairwoman, as the case requires.

- (3) Sections 5 (2), 10 (1), 17—

Omit "Chairmen" wherever occurring, insert instead "Chairpersons".

Government and Related Employees Appeal Tribunal (Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PRESIDING
MEMBERS OF THE TRIBUNAL—*continued*

- (4) Sections 7 (2), 10 (2)—
Omit “he” wherever occurring, insert instead “the person”.
- (5) Section 8—
Omit “his”, insert instead “the Senior Chairperson’s”.
- (6) (a) Section 9 (1)—
Omit “his duties”, insert instead “duty”.
- (b) Section 9 (2) (b)—
Omit “him”, insert instead “the Acting Senior Chairperson”.
- (7) Section 10 (2)—
Omit “him”, insert instead “the person”.
- (8) Section 11—
Omit “his”, insert instead “the Chairperson’s”.
- (9) Sections 23 (3), 31 (2)—
Omit “he” wherever occurring, insert instead “the Senior Chairperson”.
- (10) Section 40—
Omit “chairman”, insert instead “chairperson”.
- (11) Section 41 (4)—
Omit “he” wherever occurring, insert instead “the Chairperson”.
- (12) Schedule 1—
- (a) Schedule 1, heading—
Omit “CHAIRMAN” wherever occurring, insert instead “CHAIRPERSON”.
- (b) Clauses 1–8, 10, 11—
Omit “Chairman” wherever occurring, insert instead “Chairperson”.
- (c) Clause 1—
- (i) Omit “his”, insert instead “the person’s”.
- (ii) Omit “he”, insert instead “the person”.
- (d) Clause 2 (1)—
- (i) Omit “his services”, insert instead “service”.
- (ii) After “his” where secondly and thirdly occurring, insert “or her”.

Government and Related Employees Appeal Tribunal (Amendment) 1986

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PRESIDING
MEMBERS OF THE TRIBUNAL—*continued*

(e) Clause 2 (2)—

- (i) Omit “he” where firstly occurring, insert instead “the holder”.
- (ii) After “his” where firstly occurring, insert “or her”.
- (iii) After “he” where secondly and thirdly occurring, insert “or she”.
- (iv) Omit “his” where secondly occurring.
- (v) Omit “his” where thirdly occurring, insert instead “any”.

(f) Clause 3 (1)—

- (i) Omit “his” where firstly occurring.
- (ii) Omit “his appointment” where secondly occurring, insert instead “being appointed”.

(g) Clause 4—

- (i) Omit “his” where firstly occurring.
- (ii) After “his” where secondly occurring, insert “or her”.
- (iii) Omit “his office”, insert instead “the office of Chairperson”.

(h) Clause 5 (b)—

Omit “him”, insert instead “that Chairperson”.

(i) Clause 6—

Omit “he” wherever occurring, insert instead “the Senior Chairperson”.

(j) Clause 8—

Omit “his”.

(k) Clause 9—

- (i) Omit “A Chairman”, insert instead “A person appointed as a Chairperson”.
- (ii) Omit “his” where firstly and lastly occurring.
- (iii) Omit “he” wherever occurring, insert instead “the person”.
- (iv) Omit “his” where secondly, thirdly, fourthly, fifthly and sixthly occurring, insert instead “the”.

*Government and Related Employees Appeal Tribunal (Amendment) 1986*SCHEDULE 2—*continued*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO PRESIDING
MEMBERS OF THE TRIBUNAL—*continued*

- (v) After “his” where seventhly, eighthly and tenthly occurring, insert “or her”.
 - (vi) Omit “his” where ninthly occurring, insert instead “the”.
 - (l) Clause 10 (2)—
 - (i) Omit “his” where firstly and secondly occurring, insert instead “the”.
 - (ii) Omit “he” wherever occurring, insert instead “the person”.
 - (iii) After “his” where thirdly and fourthly occurring, insert “or her”.
 - (iv) Omit “his” where fifthly and sixthly occurring, insert instead “the person’s”.
 - (m) Clause 10 (3)—
 - (i) After “he” wherever occurring, insert “or she”.
 - (ii) Omit “his” wherever occurring.
 - (iii) After “him”, insert “or her”.
 - (n) Clause 10 (4)—
 - (i) Omit “his” wherever occurring.
 - (ii) After “him”, insert “or her”.
 - (iii) After “he”, insert “or she”.
 - (o) Clause 11—
 - (i) Omit “his appointment” wherever occurring, insert instead “being appointed”.
 - (ii) Omit “he” wherever occurring, insert instead “the person”.
 - (13) Schedule 2, clause 1 (1)—
 - Omit “Chairman”, insert instead “Chairperson”.
 - (14) Schedule 6, clause 3 (1) (b)—
 - Omit “Senior Chairman”, insert instead “Senior Chairperson”.
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Government and Related Employees Appeal Tribunal (Amendment) 1986

SCHEDULE 3

(Sec. 5)

SAVINGS AND TRANSITIONAL PROVISIONS

Notifications in respect of appointments

1. (1) Section 19 of the Principal Act, as amended by this Act, requires no further notice or notification to be given in respect of a decision of which particulars were duly notified, before 1 January 1987, in accordance with that section as at that time in force.

(2) A form prescribed or approved for the purposes of section 19 (1) or (3) of the Principal Act, as in force immediately before 1 January 1987, shall be deemed (subject to any regulation or approval made or given for the purposes of that section, as amended by this Act) to be a form prescribed or approved for the purposes of section 19 (4) or (5), respectively, of the Principal Act, as amended by this Act.

Rights of appeal

2. Notwithstanding the amendment made to section 21 (1) (d) of the Principal Act by this Act, that paragraph, as in force immediately before 1 January 1987, continues to apply to and in respect of decisions referred to in that section that were duly notified under the Principal Act within the period of 28 days immediately preceding 1 January 1987.

Time for lodgment of appeals

3. Notwithstanding the amendments made to section 29 of the Principal Act by this Act, that section, as in force immediately before 1 January 1987, continues to apply to and in respect of an appeal in respect of which the right to lodge notice of the appeal accrued within the period of 28 days immediately preceding 1 January 1987.

Agents for service of notices

4. An appointment made, before 1 January 1987, for the purpose specified in section 30 (1) (b) of the Principal Act, as in force immediately before that date, shall be deemed to be an appointment made for the purposes referred to in that paragraph, as amended by this Act.

Mode of proceedings

5. Notwithstanding the repeal and substitution of section 35 of the Principal Act by this Act, that section, as in force immediately before 1 January 1987, continues to apply to and in respect of the hearing of appeals pending at 1 January 1987.

Representation

6. Notwithstanding the amendment made to section 38 (4) of the Principal Act by this Act, a person who, before 1 January 1987, arranged to be represented, in any formal sitting of the Government and Related Employees Appeal Tribunal conducted to hear a particular appeal, by counsel or a solicitor is entitled to be so represented.

Termination of pending appeal

7. Section 47^A of the Principal Act, as amended by this Act, applies to appeals lodged before 1 January 1987 in the same way as it applies to appeals lodged on or after that date.

Government and Related Employees Appeal Tribunal (Amendment) 1986

SCHEDULE 3—*continued*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

Identity of office

8. A reference in any Act or in any instrument made under an Act (and, in particular, in any determination of the Statutory and Other Offices Remuneration Tribunal in force on 1 January 1987) to a Chairman of the Government and Related Employees Appeal Tribunal shall be read as a reference to a Chairperson of that Tribunal.
