



New South Wales

Transport Administration (Staff) Amendment (Rail and Ferry Authorities) Regulation 2008

under the

Transport Administration Act 1988

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Transport Administration Act 1988*.

DAVID CAMPBELL, M.P.,
Minister for Transport

Explanatory note

The object of this Regulation is to amend the *Transport Administration (Staff) Regulation 2005* to re-make provisions relating to disciplinary proceedings, promotion appeals and reviews and disciplinary appeals for officers of RailCorp and Sydney Ferries. These provisions are currently contained in the *State Owned Corporations Regulation 2003* which will cease to have effect as a consequence of amendments made by the *Transport Administration Amendment (Rail and Ferry Transport Authorities) Act 2008*, including the removal of the designation of RailCorp and Sydney Ferries as State owned corporations.

This Regulation is made under the *Transport Administration Act 1988*, including sections 58C, 64 and 119 (the general regulation-making power).

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Regulation 2008

Clause 1

Transport Administration (Staff) Amendment (Rail and Ferry Authorities) Regulation 2008

under the

Transport Administration Act 1988

1 Name of Regulation

This Regulation is the *Transport Administration (Staff) Amendment (Rail and Ferry Authorities) Regulation 2008*.

2 Commencement

This Regulation commences on 1 January 2009.

3 Amendment of Transport Administration (Staff) Regulation 2005

The *Transport Administration (Staff) Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Omit “or 32” from the definition of *disciplinary appeal* in clause 3 (1).

Insert instead “, 32 or 43”.

[2] Clause 3 (1)

Insert in appropriate alphabetical order:

promotion appeal means an appeal under clause 7, 22 (5), 41 or 42.

RailCorp officer includes an employee of RailCorp, but does not include a casual or temporary employee.

Sydney Ferries officer includes an employee of Sydney Ferries, but does not include a casual or temporary employee.

[3] Part 5

Insert after Part 4:

Part 5 RailCorp and Sydney Ferries staff

Division 1 Interpretation

36 Definitions

In this Part:

transport corporation means RailCorp or Sydney Ferries.

transport corporation officer means:

- (a) in the case of RailCorp—a RailCorp officer, or
- (b) in the case of Sydney Ferries—a Sydney Ferries officer.

Division 2 Disciplinary proceedings

37 Punishments in disciplinary proceedings

- (1) A transport corporation may impose any one or more of the following punishments in disciplinary proceedings against a transport corporation officer:

- (a) a caution or reprimand,
- (b) a fine of an amount not exceeding \$100,
- (c) reduction in position, rank or grade and pay,

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- (d) suspension from duty without pay,
- (e) dismissal.
- (2) Instead of dismissing a transport corporation officer, the transport corporation may allow the officer to resign.
- (3) This Division must not be construed as requiring the taking of disciplinary proceedings in order that a transport corporation may dispense with the services of a transport corporation officer or other employee of the transport corporation.
- (4) Nothing in this clause limits any other action that may be taken under any other law by a transport corporation in respect of an officer in disciplinary proceedings.

38 Suspension of officer pending disciplinary proceedings

- (1) A transport corporation officer may be temporarily suspended from duty:
 - (a) by the transport corporation, or
 - (b) by any other transport corporation officer who is senior in position, rank or grade,pending the institution or determination of disciplinary proceedings against the officer.
- (2) The transport corporation may at any time terminate any such suspension.
- (3) A transport corporation may withhold the payment of salary to a transport corporation officer suspended from duty.

39 Transport corporation officers convicted of serious offences

- (1) A transport corporation may take disciplinary proceedings against a transport corporation officer who is convicted of a serious criminal offence.
- (2) For the purposes of this clause, *serious criminal offence* means an offence committed in New South Wales that is punishable by imprisonment for 6 months or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.

40 Procedure in disciplinary hearings

- (1) A transport corporation officer who is subject to disciplinary proceedings is entitled to be notified in writing by the transport corporation of the particulars of the alleged behaviour giving rise to the proceedings.

- (2) A formal hearing is not required to be held before the person or body investigating the alleged behaviour, but the transport corporation officer the subject of the proceedings may make representations to that person or body.

Division 3 Appeals to Transport Appeal Boards

41 Promotion appeals by RailCorp officers

- (1) For the purposes of this clause, an appointment to a position is *subject to appeal* if:
 - (a) the appointment is to a RailCorp officer's position with a maximum salary that is below the minimum salary for the position of senior officer, class 1, and
 - (b) the vacancy in the position was advertised.
- (2) A RailCorp officer may appeal to a Transport Appeal Board against the appointment of a RailCorp officer to a position that is subject to appeal.
- (3) An appeal may be lodged only by a RailCorp officer who was an unsuccessful applicant for the vacant position.
- (4) Despite subclause (1), a decision to appoint:
 - (a) a RailCorp officer to a position that was not advertised, or
 - (b) a person who is not a RailCorp officer to any position,is not subject to appeal to a Transport Appeal Board.
- (5) The only ground on which a RailCorp officer may, under this clause, appeal to a Transport Appeal Board is that the merit of the officer is greater than that of the officer selected.

42 Promotion appeals and reviews

- (1) For the purposes of this clause, an appointment to a position is *subject to appeal* if:
 - (a) the appointment is to a Sydney Ferries officer's position with a maximum salary that is below the minimum salary for the position of senior officer, band A, and
 - (b) the vacancy in the position was advertised or, if not advertised, the appointment was made by promotion.
- (2) A Sydney Ferries officer may apply for a review by Sydney Ferries of the appointment of a Sydney Ferries officer to a position that is subject to appeal.

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- (3) An application for such a review may be made only:
 - (a) in the case of a vacancy that is advertised—by a Sydney Ferries officer who was an unsuccessful applicant for the vacant position, or
 - (b) in the case of a vacancy that is not advertised—by a Sydney Ferries officer who was seeking promotion to the vacant position but who was not selected.
- (4) An application for such a review must be made within 5 days of Sydney Ferries notifying its decision on the vacancy to the unsuccessful applicant or in a notice circulated among officers seeking promotion, as the case requires.
- (5) A Sydney Ferries officer entitled to apply for such a review may appeal to a Transport Appeal Board against the appointment concerned, but only if:
 - (a) the officer applied for the review and the application was not successful, or
 - (b) the officer applied for the review and the review was not completed within 15 days after the application was made.
- (6) Despite subclause (1), the decision to appoint to any position a person who is not a Sydney Ferries officer is not subject to review under this clause or to appeal to a Transport Appeal Board.
- (7) The only ground on which a Sydney Ferries officer may, under this clause, seek a review or appeal to a Transport Appeal Board is that the merit of the officer is greater than that of the Sydney Ferries officer selected.

43 Disciplinary appeals

A transport corporation officer may appeal to a Transport Appeal Board against:

- (a) a decision of the transport corporation to impose a punishment referred to in clause 37 (1) (b)–(e), or
- (b) a decision to suspend the officer temporarily under clause 38.

44 No other appeals to Transport Appeal Boards

An appeal does not lie to a Transport Appeal Board against any decision of a transport corporation or a transport corporation officer or other employee of a transport corporation unless a right to make the appeal is expressly conferred by this Division.

[4] Part 5 and clause 36

Renumber as Part 6 and clause 45, respectively.