



Transport Administration (Staff) Regulation 2012

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*.

GLADYS BEREJIKLIAN, MP
Minister for Transport

Explanatory note

The object of this Regulation is to replace, with some alterations, the provisions of the *Transport Administration (Staff) Regulation 2005*, which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following matters:

- (a) procedures for the appointment and promotion of State Transit Authority staff, RailCorp staff and Sydney Ferries staff,
- (b) certain conditions of employment relating to that staff,
- (c) disciplinary proceedings relating to that staff and staff of the Transport Service,
- (d) the temporary suspension of Roads and Maritime Services staff pending the institution or determination of disciplinary action or the determination of charges for offences.

This Regulation is made under the *Transport Administration Act 1988*, including sections 57, 58C, 64, 68E and 119 (the general regulation-making power).

This Regulation deals with matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Clause 1 Transport Administration (Staff) Regulation 2012

Part 1 Preliminary

Transport Administration (Staff) Regulation 2012

under the

Transport Administration Act 1988

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Transport Administration (Staff) Regulation 2012*.

2 Commencement

This Regulation commences on 1 September 2012.

Note. This Regulation replaces the *Transport Administration (Staff) Regulation 2005* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

appointment includes appointment by way of promotion, transfer or regression.

Chief Executive means:

- (a) in Part 2—the Division Head of the Division of the Government Service in which staff are employed to enable the STA to exercise its functions, or
- (b) in Part 3—the Division Head of the Division of the Government Service in which staff are employed to enable the RMS to exercise its functions.

promotion means the appointment of a person to a position with a greater maximum salary than the maximum salary for the position held by the person immediately before the appointment.

RailCorp officer means an employee of RailCorp other than a casual or temporary employee.

regression means the appointment of a person to a position with a lesser maximum salary than the maximum salary for the position held by the person immediately before the appointment.

RMS officer means a person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in a Division of the Government Service (other than a Department within the meaning of that Act) to enable the RMS to exercise its functions.

salary includes wages or other remuneration.

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.

STA means the State Transit Authority.

STA employee means a person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in a Division of the Government Service (other than a Department within the meaning of that Act) to enable the STA to exercise its functions.

STA officer means an STA employee other than a casual or temporary employee.

Sydney Ferries officer means an employee of Sydney Ferries other than a casual or temporary employee.

transfer means the appointment of a person to a position with the same maximum salary as the maximum salary for the position held by the person immediately before the appointment.

- (2) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Transport Administration (Staff) Regulation 2012

Part 2 STA staff

Part 2 STA staff

Division 1 Appointment of STA officers

4 Advertising of vacancies

- (1) Unless the Chief Executive otherwise determines, vacancies in STA officers' positions must be advertised before they are filled.
- (2) Vacancies may be advertised either within the service of the STA or both within and outside the service of the STA.
- (3) In deciding to appoint a person to a vacant STA officer's position that has been advertised, the Chief Executive may select only a person who has duly applied for appointment to the vacant position.
- (4) The Chief Executive may do any one or more of the following:
 - (a) extend the time stipulated in an advertisement for lodging applications for a vacant position,
 - (b) decline to appoint any of the applicants for a vacant position that has been advertised,
 - (c) re-advertise a vacancy.
- (5) Despite subclause (3), if:
 - (a) there are no applicants for a vacant STA position that has been advertised, or
 - (b) the Chief Executive has declined to appoint any applicant to the position,the Chief Executive may fill the position as if it had not been advertised.

5 Appointments from within or outside service of STA

- (1) The Chief Executive may appoint to any STA officer's position in the service of the STA:
 - (a) a person already engaged in that service, or
 - (b) a person not engaged in that service.
- (2) The Chief Executive may arrange competitive examinations or take other measures for determining suitability for appointment to vacant STA officers' positions.

6 Merit appointments

- (1) This clause applies to appointments to fill any vacancy in an STA officer's position.

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- (2) For the purpose of determining the merit of persons eligible for appointment to a position, the Chief Executive must have regard to:
 - (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.
 - (3) If a vacant STA officer's position has been advertised, the Chief Executive must, subject to clause 4 (5), select from among the applicants eligible for appointment the applicant who, in the opinion of the Chief Executive, has the greatest merit.
 - (4) If a vacant STA officer's position has not been advertised, the Chief Executive:
 - (a) may appoint any person who is not an STA officer, or
 - (b) may appoint an STA officer by way of promotion, if the STA officer has, in the opinion of the Chief Executive, the greatest merit of the STA officers eligible for promotion, or
 - (c) may appoint an STA officer by way of transfer or regression.
 - (5) This clause applies to positions advertised within the service of the STA as well as to positions advertised both within and outside the service of the STA.

7 Promotion reviews relating to STA officers

- (1) For the purposes of this clause, an appointment to a position is a *reviewable appointment* if:
 - (a) the appointment is to an STA 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.
- (2) An STA officer may apply for a review by the Chief Executive of a reviewable appointment.
- (3) An application for such a review may be made only by an STA officer:
 - (a) who was an unsuccessful applicant for the vacant position, and
 - (b) for whom the vacant position would be a promotion.
- (4) An application for such a review must be made within 5 days of the Chief Executive notifying the Chief Executive's decision on the vacancy to the unsuccessful applicant or in a notice circulated among STA officers seeking promotion, as the case requires.

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Part 2 STA staff

- (5) Despite subclause (1), the appointment to any position of a person who is not an STA officer is not a reviewable appointment for the purposes of this clause.
- (6) The only ground on which an STA officer may, under this clause, seek a review is denial of procedural fairness.

8 Appointment on probation

- (1) Every person appointed to the service of the STA as an STA officer must, in the first instance, be appointed on probation for a period of 3 months.
- (2) In a particular case, the Chief Executive may make an appointment without probation.
- (3) The Chief Executive may, during the period of probation, extend the period of probation, but the total period of probation may not exceed 6 months.
- (4) A period of leave (with or without pay) must not be included in calculating any such total period of 6 months.
- (5) The Chief Executive may, during or after the period of probation, confirm the STA officer's appointment or discharge the officer from the service of the STA.

9 Provisional appointments

- (1) The Chief Executive may make provisional appointments of STA officers by way of promotion, transfer or regression.
- (2) An STA officer provisionally appointed to a position may act in that position until the appointment is confirmed.

Division 2 Conditions of employment

10 Sick leave

- (1) Except as otherwise provided by any industrial agreement to which the Chief Executive is a party, STA employees are entitled to receive and accrue the same sick leave entitlements as persons employed in the Public Service of New South Wales under the *Public Sector Employment and Management Act 2002* and the regulations made under that Act.
- (2) This clause does not apply to any class of casual or temporary employees determined by the Chief Executive.

11 Employment outside official duties

- (1) An STA officer must not, except with the prior written permission of the Chief Executive:
 - (a) hold any paid office or engage in any paid employment, or
 - (b) carry on any business or engage in the private practice of any profession,outside the duties of the officer's position.
- (2) The Chief Executive may, by notice in writing given to the STA officer concerned, withdraw any such permission at any time.
- (3) For the purposes of this clause, an STA officer is taken to hold a paid office or engage in paid employment even though:
 - (a) the officer does not accept payments to which the officer is entitled for the officer's services, or
 - (b) the officer accepts only an honorarium or allowance for the officer's services.
- (4) An STA officer who contravenes this clause is taken to be guilty of misconduct for the purposes of disciplinary proceedings.

12 Retirement of officers on medical grounds

If an STA officer becomes, as the result of the onset of a specified infirmity of body or mind, unable to carry out the inherent requirements of the officer's duties, the Chief Executive may cause the officer to be retired.

Division 3 Disciplinary proceedings against STA officers**13 Punishments in disciplinary proceedings**

- (1) The Chief Executive may impose any one or more of the following punishments in disciplinary proceedings against an STA officer:
 - (a) a caution or reprimand,
 - (b) a fine of an amount not exceeding \$100,
 - (c) reduction in position, rank or grade and pay,
 - (d) suspension from duty without pay,
 - (e) dismissal.
- (2) Instead of dismissing an STA officer, the Chief Executive may allow the officer to resign.
- (3) The Chief Executive may deduct a fine imposed on an STA officer from the officer's salary.

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Clause 14 Transport Administration (Staff) Regulation 2012

Part 2 STA staff

- (4) This Division is not to be construed as requiring the taking of disciplinary proceedings in order that the Chief Executive may dispense with the services of an STA employee.

14 Suspension of STA officer pending disciplinary proceedings

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

15 STA officers convicted of serious criminal offences

The Chief Executive may take disciplinary proceedings against an STA officer who is convicted of a serious criminal offence.

16 Procedure in disciplinary proceedings

- (1) An STA officer who is subject to disciplinary proceedings is entitled to be notified in writing by the Chief Executive 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 STA officer the subject of the proceedings may make representations to that person or body.

Division 4 Miscellaneous

17 Return of property on termination of employment

- (1) An STA employee must, within 7 days of the termination or suspension of the person's employment, return any property belonging to the STA that is in the person's possession at the time of that termination or suspension.
- (2) In this clause, *termination* means resignation, retirement, dismissal, retrenchment or other cessation of employment, and includes unauthorised absence from duty.

Part 3 RMS staff

18 Temporary suspension

- (1) An RMS officer may be temporarily suspended from duty by the Chief Executive pending:
 - (a) the institution or determination by the Chief Executive of disciplinary action against the officer, or
 - (b) the determination by a court of any charge against the officer for a serious criminal offence.
- (2) The Chief Executive may remove a suspension at any time.
- (3) If the Chief Executive so directs, any salary payable to an RMS officer is to be withheld while the officer is suspended from duty under this clause.
- (4) Salary so withheld may (if the Chief Executive so directs) be subsequently paid to the RMS officer whatever the result of the disciplinary action or charge concerned.
- (5) In this clause:

disciplinary action includes:

 - (a) disciplinary interviews or inquiries in connection with the conduct of an RMS officer, and
 - (b) disciplinary charges against an RMS officer, whether made orally or in writing.

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Clause 19 Transport Administration (Staff) Regulation 2012

Part 4 RailCorp and Sydney Ferries staff

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Division 1 Interpretation

19 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

20 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,
 - (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 is not to 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.

21 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 while the officer is suspended from duty under this clause.

22 Transport corporation officers convicted of serious offences

A transport corporation may take disciplinary proceedings against a transport corporation officer who is convicted of a serious criminal offence.

23 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 Promotion reviews

24 Promotion reviews relating to RailCorp officers

- (1) For the purposes of this clause, an appointment to a position is a *reviewable appointment* if:
 - (a) the appointment is to a RailCorp officer's position with a maximum salary that is below the minimum salary for a position graded RailCorp Grade 5 at the time of advertising the position, and
 - (b) the vacancy in the position was advertised.
- (2) A RailCorp officer may apply for a review by RailCorp of a reviewable appointment.
- (3) An application for such a review may be made only by a RailCorp officer:
 - (a) who was an unsuccessful applicant for the vacant position, and
 - (b) for whom the vacant position would be a promotion.

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Part 4 RailCorp and Sydney Ferries staff

- (4) An application for such a review must be made within 5 days of RailCorp notifying its decision on the vacancy to the unsuccessful applicant or in a notice circulated among officers seeking promotion, as the case requires.
- (5) Despite subclause (1), the appointment to any position of a person who is not a RailCorp officer is not a reviewable appointment for the purposes of this clause.
- (6) The only ground on which a RailCorp officer may, under this clause, seek a review is denial of procedural fairness.

25 Promotion reviews relating to Sydney Ferries officers

- (1) For the purposes of this clause, an appointment to a position is a *reviewable appointment* 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.
- (2) A Sydney Ferries officer may apply for a review by Sydney Ferries of a reviewable appointment.
- (3) An application for such a review may be made only by a Sydney Ferries officer:
 - (a) who was an unsuccessful applicant for the vacant position, and
 - (b) for whom the vacant position would be a promotion.
- (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) Despite subclause (1), the appointment to any position of a person who is not a Sydney Ferries officer is not a reviewable appointment for the purposes of this clause.
- (6) The only ground on which a Sydney Ferries officer may, under this clause, seek a review is denial of procedural fairness.

Division 4 Other provisions relating to RailCorp staff

26 Employment outside official duties

- (1) A RailCorp officer must not, except with the permission of RailCorp:
 - (a) hold any paid office or engage in any paid employment, or

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- (b) carry on any business or engage in the private practice of any profession,
outside the duties of the officer's position.
 - (2) RailCorp may by notice in writing given to the RailCorp officer concerned, withdraw any such permission at any time.
 - (3) For the purposes of this clause, a RailCorp officer is taken to hold a paid office or engage in paid employment even though:
 - (a) the officer does not accept payments to which the officer is entitled for the officer's services, or
 - (b) the officer accepts only an honorarium or allowance for the officer's services.
 - (4) A RailCorp officer who contravenes this clause is taken to be guilty of misconduct for the purposes of disciplinary proceedings.

27 Return of property on termination of employment

- (1) A RailCorp officer or other employee of RailCorp whose employment is terminated or suspended must, on the last day of the person's duty before the termination or suspension, return any property belonging to RailCorp that is in the person's possession at that time.
- (2) In this clause, *termination* means resignation, retirement, dismissal, retrenchment or other cessation of employment, and includes unauthorised absence from duty.

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Clause 28 Transport Administration (Staff) Regulation 2012

Part 5 Members of the Transport Service—disciplinary matters

Part 5 Members of the Transport Service—disciplinary matters

28 Definitions

In this Part:

disciplinary action, in relation to a member of the Transport Service, means any one or more of the following:

- (a) dismissal,
- (b) deferral of the payment of an increment,
- (c) reduction of the member's salary or demotion to a lower position or grade,
- (d) suspension from duty without payment of salary,
- (e) a caution or reprimand.

remedial action, in relation to a member of the Transport Service, means any one or more of the following:

- (a) counselling,
- (b) training and development,
- (c) monitoring the member's conduct or performance,
- (d) implementing a performance improvement plan,
- (e) the issuing of a warning to the member that certain conduct is unacceptable or that the member's performance is not satisfactory,
- (f) transferring the member to another position in the Transport Service that does not involve a reduction of salary or demotion to a lower position,
- (g) any other action of a similar nature.

29 Suspension from duty

- (1) The Director-General may suspend a member of the Transport Service from duty pending:
 - (a) the institution or determination of any disciplinary proceedings against the member, or
 - (b) the determination by a court of any charge against the member for a serious criminal offence.
- (2) The Director-General may remove a suspension at any time.
- (3) The Director-General may withhold the payment of salary to a member of the Transport Service while the member is suspended from duty under this clause.

30 Disciplinary proceedings

- (1) A member of the Transport Service who is subject to any disciplinary proceedings is entitled to be notified in writing by the Director-General 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 or dealing with the alleged behaviour, but the member of the Transport Service who is the subject of the proceedings may make representations to that person or body.
- (3) The Director-General may determine any disciplinary proceedings that have been instituted against a member of the Transport Service by:
 - (a) taking disciplinary action with respect to the member, or
 - (b) taking remedial action with respect to the member, or
 - (c) taking no further action.

31 Members of the Transport Service convicted of serious offences

If a member of the Transport Service is convicted of a serious criminal offence, the Director-General may:

- (a) take disciplinary action with respect to the member, or
- (b) take remedial action with respect to the member.

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Clause 32 Transport Administration (Staff) Regulation 2012

Part 6 Miscellaneous

Part 6 Miscellaneous

32 Saving

- (1) Any act, matter or thing that, immediately before the repeal of the *Transport Administration (Staff) Regulation 2005*, had effect under that Regulation is taken to have effect under this Regulation.
- (2) Without limiting subclause (1), if an appeal to a Transport Appeal Board under the *Transport Administration (Staff) Regulation 2005* was pending immediately before the repeal of that Regulation, the appeal may continue to be heard and disposed of and the decision on the appeal is to be given effect to.