

Passed by both Houses



New South Wales

Industrial Relations Amendment (Public Sector Appeals) Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Industrial Relations Amendment (Public Sector Appeals) Bill 2010

Act No , 2010

An Act to amend the *Industrial Relations Act 1996* and the *Transport Appeal Boards Act 1980* with respect to the review of decisions concerning the promotion and discipline of public sector employees and transport workers respectively; to repeal the *Government and Related Employees Appeal Tribunal Act 1980*; and to make consequential amendments to other legislation.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Public Sector Appeals) Act 2010*.

2 Commencement

This Act commences, or is taken to have commenced, on 1 July 2010.

3 Repeals

The following are repealed:

- (a) the *Government and Related Employees Appeal Tribunal Act 1980*,
- (b) the *Government and Related Employees Appeal Tribunal (Education Ancillary Staff) Amendment Act 1987*,
- (c) the *Government and Related Employees Appeal Tribunal Regulation 2005*.

Schedule 1 Amendment of Industrial Relations Act 1996 No 17

[1] Chapter 2 Employment

Insert after Part 6:

Part 7 Public sector promotion and disciplinary appeals

Division 1 Preliminary

91 Interpretation

(1) In this Part:

appeal means a promotion appeal or a disciplinary appeal.

appealable decision means a decision of a kind referred to in section 97 (1).

approved form means a form in or to the effect of a form approved by the President of the Commission.

disciplinary appeal means an appeal under section 98.

office includes position.

promotion appeal means an appeal under section 94.

public sector employee means a person who is:

- (a) employed in a Division of the Government Service within the meaning of the *Public Sector Employment and Management Act 2002* (other than a temporary employee who is employed under Part 2.5 of that Act as a special temporary employee), or

Note. The persons referred to in paragraph (a) are staff of Government Departments and other staff in the Government Service other than Ministerial staff.

- (b) employed under Part 1 of Chapter 9 of the *Health Services Act 1997* in the NSW Health Service, or
- (c) an officer, or a temporary employee, within the meaning of the *Teaching Service Act 1980*, or
- (d) employed, whether permanently or otherwise:
- (i) as an officer of either House of Parliament, or

(ii) in any position under the separate control of the President of the Legislative Council or Speaker of the Legislative Assembly, or under their joint control, or

(e) otherwise employed in the service of the Crown.

public sector employer means the following:

(a) for a public sector employee of the class referred to in paragraph (a) of the definition of **public sector employee**—the appropriate Division Head within the meaning of the *Public Sector Employment and Management Act 2002*,

(b) for a public sector employee of the class referred to in paragraph (b) of that definition—the Director-General of the Department of Health,

(c) for a public sector employee of the class referred to in paragraph (c) of that definition—the Director-General of the Department of Education and Training,

(d) for a public sector employee of the class referred to in paragraph (d) of that definition:

(i) who is an officer of the Legislative Council or under the separate control of the President of the Legislative Council—the President, or

(ii) who is an officer of the Legislative Assembly or under the separate control of the Speaker of the Legislative Assembly—the Speaker, or

(iii) who is under the joint control of the President of the Legislative Council and the Speaker of the Legislative Assembly—the President and Speaker jointly,

(e) for a public sector employee of the class referred to in paragraph (e) of that definition—the person in whose service the employee is employed.

(2) A reference in this Part to:

(a) the appointment of a public sector employee to fill a vacant office includes a reference to the appointment of a public sector employee to a higher position, and

(b) a vacant office includes a reference to a higher position the subject of an appointment referred to in paragraph (a).

92 Application of Part

- (1) This Part applies to and in respect of promotion appeals and disciplinary appeals by public sector employees other than those public sector employees or employees of a class of public sector employees who under:
 - (a) an award or enterprise agreement made or approved by the Commission on or after the commencement of this section are not entitled to appeal to the Commission under this Part, or
 - (b) an industrial instrument or any other agreement, contract, understanding or undertaking (whether express or implied) were not entitled to appeal to the Government and Related Employees Appeal Tribunal under the *Government and Related Employees Appeal Tribunal Act 1980* as in force immediately before its repeal.
- (2) Notice of an industrial instrument or any other agreement, contract, understanding or undertaking referred to in subsection (1) in relation to public sector employees or employees of a class of public sector employees may be published on the website of the Department of Premier and Cabinet.
- (3) Any such notice is prima facie evidence that this Part does not apply to the employees to whom the notice relates.

Division 2 Promotion appeals

93 Publication of notices

- (1) A public sector employer who decides to appoint or recommend the appointment of a person to fill a vacant office or position in the establishment of the employer must cause particulars of the decision to appoint or recommend the appointment of the person to be published in a notice (an **appointment notice**) in accordance with this section.
- (2) Subsection (1) applies if the public sector employer is:
 - (a) a Department Head (within the meaning of the *Public Sector Employment and Management Act 2002*) and the person appointed or whose appointment is recommended is an officer within the meaning of that Act in that or any other Department, or
 - (b) a Division Head (within the meaning of the *Public Sector Employment and Management Act 2002*) other than a Department Head and the person appointed or whose

- appointment is recommended is an employee in that Division, or
- (c) the Director-General of the Department of Health and the person appointed or whose appointment is recommended is a member of the NSW Health Service, or
 - (d) any other employer and the person appointed or whose appointment is recommended is an employee of that employer.
- (3) The appointment notice is to be published not later than 14 days after the acceptance by the person of the appointment and the notice is to be distributed to the employees of the employer.
 - (4) The employees of an employer referred to in subsection (2) (c) are, for the purpose of distributing the appointment notice, those members of the NSW Health Service who are employed in or in connection with the public health organisation or other division of that Service in which the vacant office forms part.
 - (5) The appointment notice:
 - (a) may, without limiting the manner in which it may otherwise be published, appear on the NSW Government's recruitment website, and
 - (b) is taken to have been distributed in accordance with this section if that website contains the notice and is made available to the employees of the employer.
 - (6) If the person accepts the appointment, the employer must give notice in writing of the following to every other person who applied unsuccessfully for the appointment (other than a person who withdrew his or her application):
 - (a) the fact of that person's acceptance,
 - (b) the fact of publication of the appointment notice,
 - (c) the date of the appointment notice.
 - (7) The notice under subsection (6) must be given not later than 14 days after the acceptance.
 - (8) 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 is taken to be an appointment notice if given within the time limited by subsection (3).
 - (9) An appointment notice (other than a notice to which subsection (8) applies) is, if a form is prescribed by the regulations, to be in the form so prescribed.

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- (10) The Commission may, on application by an employer, permit an appointment notice to be given to the employer's employees in an approved form.

94 Right of appeal

- (1) Subject to and in accordance with this Part, a public sector employee who is:
- (a) employed as an officer in a Department within the meaning of the *Public Sector Employment and Management Act 2002*—may appeal on the promotions appeal ground to the Commission against a decision of an employer (being a Department Head within the meaning of that Act) to appoint or recommend the appointment of another such officer to fill a vacant office in that or any other Department, and
 - (b) employed as a member of staff of a Division of the Government Service other than a Department—may appeal on the promotions appeal ground to the Commission against a decision of the employee's employer (being the appropriate Division Head within the meaning of that Act) to appoint or recommend the appointment of another employee in that Division to fill a vacant office in that Division, and
 - (c) a member of the NSW Health Service employed in or in connection with a division of the Service—may appeal on the promotions appeal ground to the Commission against a decision of the employee's employer (being the Director-General of the Department of Health) to appoint or recommend the appointment of another employee employed in or in connection with that division to fill a vacant office in or in connection with that division, and
 - (d) a person other than an officer referred to in paragraph (a), (b) or (c)—may appeal on the promotions appeal ground to the Commission against a decision of the employee's employer to appoint or recommend the appointment of another employee of that employer to fill a vacant office.
- (2) For the purposes of this section, the *promotions appeal ground* is that the appellant is, having regard to any relevant document in relation to the vacant office, more entitled to be appointed to the vacant office than the employee in whose favour the decision was made.

(3) In this section:

relevant document, in relation to a vacant office, means the provisions of any Act, statutory instrument, industrial award or agreement or of any advertisement which is required to be applied or taken into consideration by the employer in respect of an appointment to the vacant office that is published in good faith in relation to the vacant office.

95 Excluded circumstances

A public sector employee is not entitled to appeal under section 94 in respect of the decision of a public sector employer relating to a vacant office:

- (a) if the appointment to the vacant office is not a permanent appointment, or
- (b) if the vacant office is an office specified in Schedule 1, 2 or 3 to the *Statutory and Other Offices Remuneration Act 1975*, or
- (c) if the vacant office is a Department Head position in the Public Service, or
- (d) if the maximum salary applicable to the vacant office at the date of the decision of the employer exceeds:
 - (i) except as provided by subparagraph (ii)—the amount equal to the maximum salary applicable to a clerk's position graded 12 in the Public Service, or
 - (ii) where another amount is prescribed by the regulations—that other amount, or
- (e) unless the maximum salary applicable to the vacant office is greater than the salary paid, at the date of the decision of the employer, to the appellant in relation to the office held by the appellant at that date, or
- (f) unless the maximum salary applicable to the vacant office is greater than the salary paid, at the date of the decision of the employer, to the employee in whose favour that decision is made in relation to the office held by the employee at that date, or
- (g) unless, where an invitation to apply for appointment to the vacant office was given by the employer to its employees or advertised generally, the employee duly made application for appointment to the vacant office, or
- (h) unless the employee satisfies the minimum requirements, in relation to the vacant office, of any Act, statutory

instrument, industrial award or agreement or advertisement referred to in section 94, or

- (i) unless the employee is willing to take up duties in the vacant office, or
- (j) if the employee or the employee in whose favour the decision of the employer is made is:
 - (i) a temporary employee or a casual employee (within the meaning of Part 2.1 of the *Public Sector Employment and Management Act 2002*) of the Public Service, or
 - (ii) a temporary employee within the meaning of the *Teaching Service Act 1980*, or
 - (iii) in relation to a public sector employee of a class referred to in paragraph (a), (b), (d) or (e) of the definition of **public sector employee** in section 91 (1), an employee who is employed, otherwise than permanently, in the service of his or her employer.

96 Effect of failure to notify vacancy

- (1) If no invitation to apply for appointment to a vacant office in the establishment of a public sector employer:
 - (a) is given by the employer to the employer's employees, or
 - (b) is advertised generally (whether by publication in a newspaper, on a recruitment website used by the employer or in some other manner),

an affected employee may, if otherwise entitled, appeal to the Commission against the decision of the employer to appoint or recommend the appointment of one of the employer's employees to fill the vacant office.

- (2) In this section:
 - affected employee**, in relation to a vacant office in the establishment of a public sector employer, means:
 - (a) if the vacant office is not one in the Government Service or the NSW Health Service—any public sector employee employed by the employer, or
 - (b) if the vacant office is one in the Government Service—only public sector employees employed in the same Division (within the meaning of the *Public Sector Employment and Management Act 2002*) of which the vacant office forms part, or

- (c) if the vacant office is one in the NSW Health Service—only employees employed in or in connection with the same division of that Service of which the vacant office forms part.

Division 3 Disciplinary appeals

97 Notice of certain decisions etc

- (1) This section applies to the following decisions made by a public sector employer in relation to a public sector employee:
 - (a) a decision to defer, for a period in excess of 6 months, the payment of an increment to the employee,
 - (b) a decision to reduce the rank, classification, position, grade or pay of the employee,
 - (c) a decision to impose a fine or forfeit pay,
 - (d) a decision to annul the appointment of an employee appointed on probation,
 - (e) a decision to suspend the employee as a punishment where the employee is held to be guilty of misconduct or contravention of any law or any rule or direction of the employer,
 - (f) a decision to dismiss the employee,
 - (g) a decision to direct or to require the employee to resign.
- (2) A public sector employer who makes a decision to which this section applies in relation to an employee must give the employee notice, in writing, of the decision as soon as practicable after the decision is made, except as otherwise provided by an order made under subsection (4).
- (3) If the employer is unable to give the employee notice of the decision within 14 days after it is made, the employer may apply to the Commission for an order as to the giving of the notice.
- (4) On receipt of an application under subsection (3), the Commission may make such order as the Commission thinks fit as to the giving of the notice or may make an order dispensing with the giving of the notice.
- (5) A notice may be given, or the giving of a notice may be dispensed with, in accordance with an order made under subsection (4).

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- (6) In subsection (1) (f):
dismiss includes dispensing with the services of an employee (including under any right or power of the Crown to dispense with the services of an employee).
- (7) For the purposes of this Division:
- (a) a decision of a kind referred to in subsection (1) (d), (f) or (g) is a decision that may, subject to this Act, be appealed against under section 98 regardless of whether the decision was made for disciplinary reasons, and
 - (b) a reference to a public sector employer making a decision of a kind referred to in subsection (1) includes a reference to any other person (including the Crown) who is authorised by or under any law to make that decision or to carry it into effect.

98 Right of appeal

- (1) Despite anything contained in any other Act, a public sector employee may, subject to and in accordance with this Part, appeal to the Commission against an appealable decision of his or her employer.
- (2) Such an appeal may be made on the ground that the decision appealed against was made substantially in reprisal for a protected disclosure within the meaning of the *Protected Disclosures Act 1994*.
- (3) However, employees of the following classes cannot appeal to the Commission against an appealable decision referred to in section 97 (1) (d), (f) or (g):
 - (a) employees engaged under a contract of employment for:
 - (i) a specified period of time that is less than 6 months, or
 - (ii) a specified task that is of less than 6 months duration,
 - (b) employees serving a period of probation or qualifying period, if the duration of the period, or the maximum duration of the period, is determined in advance and either:
 - (i) the period, or the maximum duration, is 3 months or less, or
 - (ii) if the period, or the maximum duration, is more than 3 months—the period, or the maximum duration, is reasonable having regard to the nature and circumstances of the employment and the statutory

provisions relating to the probationary appointment of the employee concerned,

- (c) employees engaged on a casual basis for a short period except those who:
 - (i) are engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months, and
 - (ii) would, but for the decision of the employer, have had a reasonable expectation of continuing employment with the employer.

99 Alternative rights of appeal

- (1) Nothing in section 98 derogates from or otherwise affects any right of appeal a public sector employee may have, or other proceedings which may be instituted by the employee or on his or her behalf, under this or any other Act or law or any industrial award or agreement (whether enacted, existing or made before, on or after 1 July 2010) in respect of an appealable decision.
- (2) A public sector employee may not appeal to the Commission under section 98 in respect of an appealable decision if:
 - (a) the employee has elected, in writing, to forgo a right of appeal under section 98 in respect of the decision, or
 - (b) the employee makes an appeal or institutes other proceedings, or proceedings are instituted on the employee's behalf, in respect of an appealable decision under an Act or law or an industrial award or agreement referred to in subsection (1).
- (3) If an employee appeals to the Commission under section 98 in respect of an appealable decision, the employee may not then, in respect of that decision, appeal or institute other proceedings or proceedings may not be instituted on his or her behalf under an Act or law or an industrial award or agreement referred to in subsection (1).

100 Appealable decisions may be carried into effect despite right of appeal

- (1) An appealable decision may be carried into effect whether or not an appeal may be (or has been) made against the decision under this Division.
- (2) However, if the decision appealed against is a decision of a kind referred to in section 97 (1) (d), (f) or (g), a permanent

appointment is not to be made to the position held by the employee when the decision was made until:

- (a) the time for making an appeal against the decision has expired without an appeal having been made, or
- (b) if an appeal is made within that time—the appeal is determined or has lapsed.

Division 4 Procedures relating to the making of appeals

100A Notice of appeal

A public sector employee may make an appeal by lodging with the Industrial Registrar a notice of appeal in the approved form.

100B Time for lodging appeal

- (1) Notice of a promotion appeal must be lodged:
 - (a) within 21 days after the date of the notice of particulars under section 93 (1), or
 - (b) within 21 days after receipt by the public sector employee of a notice under that subsection that bears no date.
- (2) Notice of a disciplinary appeal must be lodged within 28 days after the public sector employee is notified of the decision against which the appeal is to be made.
- (3) Nothing in this section prevents a public sector employee from appealing against a decision that was not notified, or particulars of which were not notified, to the public sector employee as required by or under this or any other Act.

100C Decisions with respect to appeals

- (1) The Commission, in relation to a promotion appeal, may decide to allow or disallow the appeal.
- (2) The Commission, in relation to a disciplinary appeal, may decide to allow or disallow the appeal or make such other decision with respect to the appeal as it thinks fit.
- (3) Without limiting the generality of subsection (2), if in relation to a disciplinary appeal it appears to the Commission that the employer failed to comply with the rules of procedural fairness in making the decision appealed against, the Commission:
 - (a) is not required to allow the appeal solely on that basis and may proceed to decide the appeal on its merits, or

- (b) may quash the decision and remit the matter back to the employer with such directions (if any) as to which stage of the disciplinary process in relation to the matter may be recommenced by the employer.
- (4) The decision of the Commission in respect of an appeal is, except as provided by section 197B, final and is to be given effect to by the employer against whose decision the appeal was brought.

100D Orders by Commission with respect to payment of salary and continuity of employment

- (1) Without limiting section 100C, if the Commission decides to allow a disciplinary appeal, the Commission may:
 - (a) if the employee has paid a fine imposed by the employer or his or her pay has been forfeited—order the employer to repay the amount of any such fine or forfeited pay, and
 - (b) order the employer to pay the employee an amount stated in the order that does not exceed the remuneration the employee would, but for the decision of the employer, have received from the employer, and
 - (c) order that any period of employment of the employee with the employer is taken not to have been broken by the decision of the employer.
- (2) Any such order by the Commission must be given effect to by the employer.
- (3) Nothing in subsection (1) enables the Commission to make an order for compensation in the case where a person is not reinstated or does not continue in employment.

Division 5 Hearing of appeals

100E Conciliation of disciplinary appeals

- (1) Before a disciplinary appeal is heard by the Commission, the Commission must endeavour to settle the matter by conciliation.
- (2) If the conciliation is not successful and the matter proceeds to a hearing, the member who attempted to settle the matter by conciliation cannot sit as a member of the Commission to hear the appeal if a party to the proceedings objects to the member sitting as a member to hear the appeal.

100F Powers when appeal settled by conciliation

If a matter that is the subject of an appeal to the Commission under this Part is settled by conciliation, the Commission may:

- (a) dismiss the appeal, or
- (b) make an order on the agreed terms for settlement.

100G Presentation of cases

- (1) A public sector employer must present the employer's case to the appellant at least 7 days before the hearing of a disciplinary appeal.
- (2) At the hearing of an appeal under this Part, the public sector employer's case is to be presented first.
- (3) Nothing in subsection (2) removes from an appellant or any other person the onus of proving any ground on which the appellant relies.

100H Provisions relating to promotion appeals

- (1) A promotion appeal is, subject to the rules of the Commission and any applicable practice note issued under section 185A, to be heard in accordance with this section.
- (2) The hearing of the promotion appeal is to be informal and must not be conducted in an adversarial manner.
- (3) The persons entitled to be present at the hearing are as follows:
 - (a) the appellant,
 - (b) a person appointed by the public sector employer against whose decision the appeal is brought, being a person appointed generally or in respect of a particular appeal or class of appeals,
 - (c) the employee in whose favour the decision referred to in paragraph (b) has been made.
- (4) The persons entitled, pursuant to subsection (3), to be present at an informal hearing of the Commission are not entitled to be represented by an Australian legal practitioner or an agent or otherwise.

[2] Section 153 Jurisdiction of Commission in Court Session

Insert after section 153 (1) (j):

- (ja) proceedings under section 197B,

(jb) proceedings under section 23A of the *Transport Appeal Boards Act 1980*,

[3] Section 166 Representation of parties

Insert “or in proceedings under Part 7 (Public sector promotion and disciplinary appeals) of Chapter 2” after “conciliation proceedings” in section 166 (2).

[4] Section 166 (2A)

Insert after section 166 (2):

(2A) Despite subsections (1) and (2), a party to proceedings referred to in section 100H is not entitled to be represented by an Australian legal practitioner or by an agent who is not a practitioner.

[5] Section 181 Costs

Insert after section 181 (3):

(3A) Despite subsection (1), the Commission may not award costs in proceedings under Part 7 of Chapter 2.

Note. This subsection does not prevent the award of costs in appeals relating to questions of law in relation to public sector promotional and disciplinary matters under section 197B.

[6] Section 185 Rules of Commission

Insert after section 185 (2):

(2A) Without limiting subsection (2) (b), rules of the Commission may provide for the giving of evidence (including by way of reports or other documents) in appeals under Part 7 of Chapter 2 by persons having specialised knowledge of matters relevant to promotion appeals or disciplinary appeals under that Part.

[7] Section 185 (4)

Insert after section 185 (3):

(4) This section extends to the making of rules relating to the practice and procedure (and other matters) relating to promotion appeals and disciplinary appeals under the *Transport Appeal Boards Act 1980*.

[8] Section 185A Practice notes

Insert after section 185A (1):

Note. The power to make rules under section 185 (4) enables the President to issue practice notes under this section with respect to promotion appeals and disciplinary appeals under the *Transport Appeal Boards Act 1980*.

[9] Section 197B

Insert after section 197A:

197B Appeals on questions of law in relation to public sector promotional and disciplinary matters

- (1) A party to proceedings under Part 7 of Chapter 2 may, subject to this Part, appeal to the Full Bench of the Commission in Court Session against any decision of the Commission in the proceedings on a question of law.
- (2) On an appeal under this section, the Full Bench of the Commission in Court Session may:
 - (a) remit the matter to the Commission for determination in accordance with the decision of the Full Bench, or
 - (b) make such other order in relation to the appeal as seems fit.

[10] Section 206 Dual Federal and State appointments of members

Omit “or of the Government and Related Employees Appeal Tribunal (sections 7 and 10 of, and Schedule 1 to, the *Government and Related Employees Appeal Tribunal Act 1980*)” from the note to the section.

[11] Section 405 Statutory provisions relating to public sector employees

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*” from section 405 (1) (a).

Insert instead “Part 7 of Chapter 2”.

[12] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Industrial Relations Amendment (Public Sector Appeals) Act 2010

[13] **Schedule 4, Part 12**

Insert after clause 51:

**Part 12 Provisions consequent on repeal of
Government and Related Employees
Appeal Tribunal Act 1980**

52 Definitions

In this Part:

former appellate body means the Government and Related Employees Appeal Tribunal.

GREAT Act means the *Government and Related Employees Appeal Tribunal Act 1980*.

2010 Act means the *Industrial Relations Amendment (Public Sector Appeals) Act 2010*.

53 Promotion and disciplinary appeals made before repeal of GREAT Act

- (1) An appeal against a decision of an employer that was lodged in accordance with the GREAT Act before its repeal is taken to have been made to the Commission under Part 7 of Chapter 2 of this Act (as inserted by the 2010 Act).
- (2) If the hearing of an appeal referred to in subclause (1) had commenced before the repeal of the GREAT Act, the President of the Commission may give such directions regarding the continuance of the hearing (including directions for the replacement of a member of the former appellate body with a member of the Commission and the exercise of any functions by the Industrial Registrar in relation to the hearing) that the President considers appropriate.
- (3) A member of the Commission who replaces a member of the former appellate body is to have regard to the evidence and decisions made in relation to the appeal before the replacement.
- (4) A member of the former appellate body is not entitled to any remuneration or compensation because of the loss of office as a consequence of the enactment of the 2010 Act.

Schedule 2 Amendment of Transport Appeal Boards Act 1980 No 104

[1] **Long title**

Insert “and other authorities” after “Authority”.

[2] **Section 3**

Insert after section 2:

3 Application of Act

This Act applies to and in respect of promotion appeals and disciplinary appeals by persons other than any persons or class of persons prescribed by the regulations.

[3] **Section 4 Definitions**

Omit the definitions of *Chairperson*, *member* and *Vice-Chairperson* from section 4 (1).

[4] **Section 4 (1)**

Omit “2000” wherever occurring in the definitions of *disciplinary appeal* and *promotion appeal*.

Insert instead “2005”.

[5] **Section 4 (1)**

Insert in alphabetical order:

Commission means the Industrial Relations Commission of New South Wales.

President means the President of the Commission.

[6] **Section 4 (1), definition of “secretary”**

Omit the definition. Insert instead:

secretary means the Industrial Registrar within the meaning of the *Industrial Relations Act 1996*.

[7] **Section 4 (3)**

Omit the subsection.

[8] Sections 5 and 6

Omit sections 5–10. Insert instead:

5 Constitution of Boards

- (1) For the purposes of this Act, there is established, in relation to each appeal, a Transport Appeal Board.
- (2) A Transport Appeal Board is constituted by the President.
- (3) Clause 1 of Schedule 2 to the *Industrial Relations Act 1996* extends to the exercise of functions by the President as a Board under this Act.
- (4) The President may delegate to another member of the Commission the functions of the President as a Board under this Act, other than this power of delegation.

6 Functions of Boards

A Board has and may exercise the functions conferred on it by or under this Act, the *Transport Administration Act 1988* or any other Act.

[9] Section 11 Sittings of Boards

Omit “shall, unless the Chairperson otherwise directs,” from section 11 (1).

Insert instead “is, unless it determines otherwise, to”.

[10] Section 11 (2)

Omit “may be formal or informal”.

Insert instead “are to be treated as if they were proceedings before the Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

[11] Section 11, note

Insert at the end of the section:

Note. On proceedings before the Commission, see in particular sections 162–166 of the *Industrial Relations Act 1996*. Rules may be made, and practice notes issued, under sections 185 and 185A, respectively, of that Act with respect to the practice and procedure of Boards.

[12] Section 11A

Omit sections 11A–11D. Insert instead:

11A Persons entitled to be present at proceedings

The persons entitled to be present at proceedings of a Board are:

- (a) the appellant whose appeal is being heard by the Board, and
- (b) a person appointed by the employer against whose decision the appeal is brought, being a person appointed generally or in respect of a particular appeal or class of appeals, and
- (c) the employee in whose favour the decision referred to in paragraph (b) has been made.

[13] Section 12 Members of a Board

Omit the section.

[14] Section 14 Time for hearing of appeals

Omit “, the Chairperson or members of a Board” from section 14 (2) (b).

Insert instead “or the member of the Board”.

[15] Section 18 Discovery of documents, attendance of witnesses etc

Omit the section.

[16] Section 19 Administration of oath

Omit the section.

[17] Section 20

Insert before section 21:

20 Costs

A Board may not award costs in relation to proceedings in an appeal (other than proceedings under section 23A).

[18] Section 21 Adjournment

Omit section 21 (2).

[19] Section 23 Decisions on appeals

Omit “The” from section 23 (2).

Insert instead “Except as provided by section 23A, the”.

[20] Section 23A

Insert after section 23:

23A Appeals on questions of law

- (1) A party to a promotion or disciplinary appeal may, subject to subsection (3), appeal to the Full Bench of the Commission in Court Session against any decision of a Board in the proceedings on a question of law.
- (2) On an appeal under this section, the Full Bench of the Commission in Court Session may:
 - (a) remit the matter to the Board for determination in accordance with the decision of the Full Bench, or
 - (b) make such other order in relation to the appeal as seems fit.
- (3) Part 7 of Chapter 4 of the *Industrial Relations Act 1996* applies to an appeal against a decision of a Board under this section in the same way as it applies to an appeal against a decision of the Commission under section 197B of that Act.

[21] Section 28 Costs and expenses of Boards

Omit the section.

[22] Section 31 Reference of certain matters to President

Omit “Chairperson or a Vice-Chairperson” wherever occurring in section 31 (1) and (2).

Insert instead “President”.

[23] Section 31 (3)

Omit “Chairperson or Vice-Chairperson, as the case may be,”.

Insert instead “President”.

[24] Section 32 Regulations

Omit section 32 (2) (a) and (b).

[25] Section 32 (3)

Omit the subsection.

[26] Section 35 Rights of appeal to any other appeals body barred

Insert “or to the Commission” after “statutory appeals tribunal” in section 35 (1).

[27] Schedule 1 Members of a Board

Omit the Schedule.

[28] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1A (1):

*Industrial Relations Amendment (Public Sector Appeals)
Act 2010*

[29] Schedule 2, Part 4

Insert after clause 5:

**Part 4 Provisions consequent on enactment of
Industrial Relations Amendment (Public
Sector Appeals) Act 2010**

6 Definitions

In this Part:

former appellate body means a Transport Appeal Board constituted under section 5 of this Act before its substitution by the 2010 Act.

2010 Act means the *Industrial Relations Amendment (Public Sector Appeals) Act 2010*.

7 Promotion and disciplinary appeals made before amendment of this Act by 2010 Act

- (1) An appeal against a decision of an employer that was lodged in accordance with this Act as in force immediately before its amendment by the 2010 Act is taken to have been made to a Board as constituted under this Act as so amended.
- (2) If the hearing of an appeal referred to in subclause (1) had commenced before the amendment of this Act, the President may give such directions regarding the continuance of the hearing (including directions for the replacement of the former appellate body with a Board as constituted under this Act as amended by the 2010 Act and the exercise of any functions by the Industrial Registrar in relation to the hearing) that the President considers appropriate.
- (3) A Board as constituted under this Act as amended by the 2010 Act that replaces the former appellate body is to have regard to the evidence and decisions made in relation to the appeal before the replacement.

Industrial Relations Amendment (Public Sector Appeals) Bill 2010

Schedule 2 Amendment of Transport Appeal Boards Act 1980 No 104

- (4) A Chairperson, Vice-Chairperson or member of the former appellate body is not entitled to any remuneration or compensation because of the loss of office as a consequence of the amendments to this Act made by the 2010 Act.

Schedule 3 Amendment of other Acts and regulation

3.1 Central Coast Water Corporation Act 2006 No 105

[1] Schedule 5 Transfer of staff, assets, rights and liabilities

Omit “, the *Government and Related Employees Appeal Tribunal Act 1980*” from clause 8 (4).

[2] Schedule 5, clause 8 (5)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.2 Education Act 1990 No 8

[1] Schedule 1A Board inspectors

Omit clause 6 (1). Insert instead:

- (1) A decision to employ or a failure to employ a person as a Board inspector, and any matter, question or dispute relating to such a decision or failure, are not industrial matters for the purposes of the *Industrial Relations Act 1996* (other than Part 7 of Chapter 2 of that Act).

[2] Schedule 1A, clause 6 (3)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.3 Education (School Administrative and Support Staff) Act 1987 No 240

[1] Section 33 Eligibility for appointment to Public Service

Omit “, the *Government and Related Employees Appeal Tribunal Act 1980*” from section 33 (2).

[2] Section 33 (3)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.4 Fire Brigades Regulation 2008

Clause 47 Fines

Omit “Government and Related Employees Appeal Tribunal” from clause 47 (3).

Insert instead “Industrial Relations Commission”.

3.5 Health Services Act 1997 No 154

Section 121H Industrial arbitration or legal proceedings excluded

Omit “Government and Related Employees Appeal Tribunal” from section 121H (7).

Insert instead “Industrial Relations Commission”.

3.6 Independent Commission Against Corruption Act 1988 No 35

Section 104 Appointment of staff

Omit “Government and Related Employees Appeal Tribunal” from section 104 (10).

Insert instead “Industrial Relations Commission”.

3.7 Landcom Corporation Act 2001 No 129

Schedule 2 Transfer of staff

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*” from clause 2 (2).

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.8 Ombudsman Act 1974 No 68

Section 34 Disclosure by Ombudsman or officer

Omit “Government and Related Employees Appeal Tribunal” from section 34 (1) (b) (ii).

Insert instead “Industrial Relations Commission”.

3.9 Police Act 1990 No 47

[1] Section 3 Definitions

Omit the definition of *GREAT* from section 3 (1).

[2] Section 44 Industrial arbitration and legal proceedings excluded

Omit “GREAT” from section 44 (6).

Insert instead “the Industrial Relations Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

[3] Section 82C Appointment on merit

Omit “GREAT” from section 82C (5).

Insert instead “the Industrial Relations Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

[4] Section 82C (5) (b)

Omit “Tribunal”. Insert instead “Commission”.

[5] Section 82J Eligibility of non-executive administrative officers for appointment to Public Service

Omit “, the *Government and Related Employees Appeal Tribunal Act 1980*” from section 82J (2).

[6] Part 6A, Division 3, heading

Omit “GREAT”. Insert instead “Industrial Relations Commission”.

[7] Section 83

Omit the section. Insert instead:

83 Appeal to Industrial Relations Commission against promotions of administrative officers

The provisions of Part 7 of Chapter 2 of the *Industrial Relations Act 1996* relating to promotion appeals apply to non-executive administrative officers as if those officers were employees, and the Commissioner were their employer, within the meaning of that Part.

[8] Section 88 Industrial arbitration or legal proceedings excluded in relation to appointments

Insert “(except Part 7 of Chapter 2 of that Act)” after “*Industrial Relations Act 1996*” in section 88 (1).

[9] Section 88 (4)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

[10] Sections 173 (9), 181D (7) and 183D (5)

Omit “GREAT and” wherever occurring.

[11] Section 185

Omit the section. Insert instead:

185 Disciplinary appeals to Industrial Relations Commission by non-executive administrative officers

The provisions of Part 7 of Chapter 2 of the *Industrial Relations Act 1996* relating to disciplinary appeals apply to administrative officers (not being members of the NSW Police Force Senior Executive Service) as if those officers were employees, and the Commissioner were their employer, within the meaning of that Part.

[12] Section 186

Omit the section. Insert instead:

186 Appeal to Industrial Relations Commission relating to leave when hurt on duty

- (1) A police officer may appeal to the Industrial Relations Commission against a decision of the Commissioner to grant or refuse leave of absence on full pay to the police officer during any period of absence caused by that officer being hurt on duty within the meaning of section 1 (2) of the *Police Regulation (Superannuation) Act 1906*.
- (2) The *Industrial Relations Act 1996* applies to and in respect of an appeal under this section in the same way as it applies to a disciplinary appeal under Part 7 of Chapter 2 of that Act.
Note. A disciplinary appeal under Part 7 of Chapter 2 of the *Industrial Relations Act 1996* is made by lodging a notice of appeal with the Industrial Registrar under section 100B (2) of that Act within 28 days after the public sector employee concerned is notified of the decision against which the appeal is made.
- (3) For the purpose of the Industrial Relations Commission hearing and determining an appeal under this section, a police officer is taken to be a public sector employee and the Commissioner the public sector employer, within the meaning of Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

3.10 Public Finance and Audit Act 1983 No 152

[1] Section 33F Executive officers

Insert “, Part 7 (Public sector promotion and disciplinary appeals)” after “(Unfair dismissals)” in section 33F (5).

[2] Section 33F (8)

Omit the subsection.

3.11 Public Sector Employment and Management Act 2002 No 43

[1] Section 21 Appointments subject to promotion appeal

Omit “Government and Related Employees Appeal Tribunal” wherever occurring in section 21 (1) and (2) (b).

Insert instead “Industrial Relations Commission”.

[2] Section 21 (2) (a)

Omit “*Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “*Industrial Relations Act 1996*”.

[3] Section 21 (2), note

Omit “section 19 of the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “section 93 of the *Industrial Relations Act 1996*”.

[4] Section 22 Legal proceedings not to be brought in respect of appointments etc

Insert “(other than Part 7 of Chapter 2 of that Act)” after “*Industrial Relations Act 1996*” in section 22 (1).

[5] Section 22 (4)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

[6] Section 35 Industrial arbitration or legal proceedings excluded

Insert “, Part 7 (Public sector promotion and disciplinary appeals)” after “(Unfair dismissals)” in section 35 (3).

[7] Section 35 (7)

Omit the subsection.

[8] Section 72 Industrial arbitration or legal proceedings excluded

Insert “, Part 7 (Public sector promotions and disciplinary appeals)” after “(Unfair dismissals)” in section 72 (4).

[9] Section 72 (7)

Omit the subsection.

[10] Section 89 Variations in remuneration on transfer

Omit “section 20 of the *Government and Related Employees Appeal Tribunal Act 1980*” from section 89 (2).

Insert instead “section 94 of the *Industrial Relations Act 1996*”.

3.12 State Owned Corporations Act 1989 No 134

[1] Section 36 Application of other Acts

Omit section 36 (1) (a). Insert instead:

(a) Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

[2] Schedule 4 Provisions relating to certain staff

Omit “, the *Government and Related Employees Appeal Tribunal Act 1980*” from clause 5 (2).

[3] Schedule 4, clause 5 (3)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.13 State Water Corporation Act 2004 No 40

Schedule 2 Transfer of staff

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*” from clause 3 (2).

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.14 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

[1] Schedule 2 Public offices

Omit the following from Part 1:

Senior Chairperson of the Government and Related Employees Appeal Tribunal (not being the holder of a judicial office)

Chairperson of the Government and Related Employees Appeal Tribunal (not being the holder of a judicial office)

[2] Schedule 3 Public offices

Omit “Chairperson of Transport Appeal Boards” from Part 2.

3.15 Subordinate Legislation (Repeal) Act 1985 No 232

Schedule 1 Subordinate legislation not repealed by section 3

Omit the following from Part A:

Government and Related Employees Appeal Tribunal Act 1980

Government and Related Employees Appeal Tribunal Regulation 1980

3.16 Superannuation Administration Authority Corporatisation Act 1999 No 5

Schedule 2 Transfer of staff

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*” from clause 4 (2).

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.17 Supreme Court Act 1970 No 52

Section 48 Assignment to the Court of Appeal

Omit subparagraph (iii) from the definition of *specified tribunal* in section 48 (1) (a).

3.18 Teaching Service Act 1980 No 23

[1] Section 48 Appointments on probation

Omit “Government and Related Employees Appeal Tribunal” from section 48 (5).

Insert instead “Industrial Relations Commission”.

[2] Section 62

Omit the section. Insert instead:

62 No appeal to Industrial Relations Commission

The decision of the Director-General to appoint a person to a vacant senior position is not subject to appeal under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

[3] Section 76 Retirement or transfer of officers through invalidity or incapacity

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*” from section 76 (2).

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

[4] Section 96 Evidence as to Education Gazette

Omit “Government and Related Employees Appeal Tribunal”.

Insert instead “Industrial Relations Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

3.19 Technical and Further Education Commission Act 1990 No 118

[1] Section 19 Legal proceedings not to be brought in respect of appointments etc

Insert “(except Part 7 of Chapter 2 of that Act)” after “*Industrial Relations Act 1996*” in section 19 (1).

[2] Section 19 (4)

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”.

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.

**3.20 Waste Recycling and Processing Corporation Act 2001
No 59**

Schedule 2 Transfer of staff of Waste Recycling and Processing Service

Omit “the *Government and Related Employees Appeal Tribunal Act 1980*”
from clause 3 (2).

Insert instead “Part 7 of Chapter 2 of the *Industrial Relations Act 1996*”.