

Police Department (Transit Police) Act 1989 No 58

[1989-58]



New South Wales

Status Information

Currency of version

Historical version for 1 January 2000 to 8 September 2002 (accessed 2 May 2024 at 19:38)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Public Sector Employment and Management Act 2002 No 43](#) (not commenced)

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File last modified 3 July 2002

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Police Department (Transit Police) Act 1989 No 58



New South Wales

An Act relating to the employment of transit police and the regulation of the conditions of their employment; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Police Department (Transit Police) Act 1989*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects

The principal objects of this Act are:

- (a) to formalise the transfer of responsibility for certain officers of the Transport Investigation Branch of the State Rail Authority to the Commissioner, and
- (b) to provide for the employment in the service of the Crown of the officers so transferred as members of an organisation ("the transit police service") functioning in the Police Service, and
- (c) to provide for the Commissioner to be regarded as their employer in all but industrial matters, and
- (d) to ensure that the Commissioner may discipline them in the same way as they could be disciplined if they were police officers, and
- (e) to make provision to preserve certain entitlements of the transferred officers.

4 Definitions

(1) In this Act:

classification means a classification of the transit police service referred to in section

7.

Commissioner means the Commissioner of Police.

Industrial Authority means the Public Employment Industrial Relations Authority constituted by the [Public Sector Management Act 1988](#).

remuneration includes salary and wages.

transit police service means the transit police service, as referred to in section 6 (1).

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Part 2 Organisation of transit police service

5 Formal transfer of SRA staff

- (1) On the commencement of this subsection:
 - (a) the positions specified in an order made under subsection (2) shall be transferred to the transit police service, and
 - (b) the persons then employed in those positions shall be taken to be employed as members of the transit police service under this Act.
- (2) The Governor may, on the recommendation of the Commissioner, by order published in the Gazette, specify the positions in the Transport Investigation Branch of the State Rail Authority to be transferred under this section.
- (3) The order may nominate the classification of a transferred position.

6 Transit police service

- (1) The transit police service consists of the persons employed as transit police under this Act.
- (2) The principal function of the transit police service is to promote security, safety and order on public transport in the State, including railways and trains.
- (3) The [Public Sector Management Act 1988](#) does not apply to or in respect of the appointment or employment of a member of the transit police service and a member of the transit police service, is not, as such a member, subject to that Act.
- (4) A member of the transit police service is not a police officer.

7 Classifications and positions

(1) The classifications of the transit police service are:

- (a) Chief Transit Police Officer, and
- (b) Senior Transit Police Officer, and
- (c) Patrol Officer—1st Class, and
- (d) Patrol Officer,

and such other classifications as the Minister may from time to time determine.

(2) The Commissioner may create positions in any classification.

8 Maximum number of members

The Minister may from time to time make determinations relating to either or both of the following:

- (a) the classes or descriptions of members of the transit police service who may be employed in any classification,
- (b) the maximum number of members of the transit police service who may be employed in any classification.

9 Duties of members

- (1) The duties of members of the transit police service shall be as determined by the Commissioner or as specified by the regulations.
- (2) In the event of an inconsistency, the regulations prevail.
- (3) A member of the transit police service is not liable for any injury or damage caused by any act or omission of the member in the performance by the member, in good faith, of a duty conferred or imposed on the member by or under this Act.

Part 3 Employment

10 Employment of members

- (1) If a vacancy exists in a position in the transit police service, the Commissioner may, by way of transfer or promotion, appoint a member of the transit police service to be employed in the service of the Crown in the position.
- (2) The Commissioner must, from the applicants for a vacant position, select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (3) In determining the merit of applicants, the Commissioner shall 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 the applicants that are relevant to the performance of those duties.
- (4) A decision to make an appointment under this section shall not be acted on (except by way of temporary appointment):
- (a) until the expiration of the time for lodging a notice of an appeal under the *Government and Related Employees Appeal Tribunal Act 1980* against the decision, or
 - (b) if such a notice of appeal is lodged within that time, until the Government and Related Employees Appeal Tribunal has determined the appeal or the appeal has been withdrawn.

11 Requirements as to citizenship etc

- (1) A person is not eligible to be appointed to a position as a member of the transit police service unless the person is:
- (a) an Australian citizen, or
 - (b) a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law,
- and, if so required by or under the regulations, the person produces in accordance with the regulations such evidence with respect to any matters referred to in this section as is prescribed.
- (2) A member of the transit police service who is not an Australian citizen and who ceases to satisfy or does not satisfy the requirements of subsection (1) (b) is not eligible to continue in employment as a member of the transit police service and shall be dismissed as such a member by the Commissioner.

12 Vacation of position

- (1) A member of the transit police service shall be taken to have vacated his or her position if:
- (a) the member dies, or
 - (b) the member resigns the position by instrument in writing addressed to the Commissioner and the Commissioner accepts the resignation, or
 - (c) the member retires or is retired, or
 - (d) the member is dismissed under this Act, or

(e) the member's services are dispensed with as referred to in this Act.

(2) When a member of the transit police service is dismissed from or ceases to hold his or her position, all powers and authorities vested in the person shall immediately cease.

(3) Any member of the transit police service so dismissed or ceasing to hold his or her position shall immediately deliver all things:

(a) supplied to the person as such a member, or

(b) in the person's custody by virtue of being such a member,

to some person appointed (whether generally or specially) by the Commissioner for the purpose.

Maximum penalty: 10 penalty units or imprisonment for 3 months.

13 Retirement of members

(1) A member of the transit police service:

(a) may retire as a member of the service on reaching the age of 60 years, or

(b) may continue as a member of the service after reaching that age, but:

(i) may retire as a member, or

(ii) the Commissioner may cause the member to be retired as a member,

at any time after the member has reached that age and before the member reaches the age of 65 years.

(2) A member of the transit police service who reaches the age of 65 years shall, subject to subsection (3), then retire or be retired by the Commissioner.

(3) If:

(a) the Commissioner is of the opinion that it is in the public interest that a member of the transit police service who is of or above the age of 65 years should continue to perform the duties of his or her position, and

(b) the member agrees to continue to perform those duties,

the member's retirement may be deferred for a period not exceeding 12 months and thereafter, so long as the member agrees to continue to perform those duties, from time to time for such periods, not exceeding 12 months, as the Commissioner may fix.

(4) Despite any such deferment, the Commissioner may cause the member of the transit police service to be retired at any time.

14 Incapable member may be retired

If:

- (a) a member of the transit police service is found unfit to discharge or incapable of discharging the duties of his or her position, and
- (b) the unfitness or incapacity appears likely to be of a permanent character, and has not arisen from actual misconduct on his or her part, or from causes within his or her control,

the Commissioner may cause the member to be retired.

15 Transfer of members

- (1) The Commissioner, if of the opinion that it would be in the interests of the administration of this Act to do so, may transfer a member of the transit police service from one position as a member of the service to another such position equal in remuneration to that of the firstmentioned position.
- (2) Such a transfer may be made only if the member has the necessary qualifications for the other position.

16 Excess staff

If the Commissioner is satisfied that a number of persons (referred to in this section as the **excess persons**) are employed as members of the transit police service in excess of the number that appears to be necessary for the efficient, effective and economical management of the functions of the service, then:

- (a) subject to paragraph (b), the Commissioner shall take such steps as are practicable to transfer the excess persons under section 15, and
- (b) if any such person cannot be usefully employed in any other position as a member of the service, the person's services shall be dispensed with by the Commissioner.

17 Excessive remuneration

- (1) If the Commissioner is satisfied that a member of the transit police service is in receipt of greater remuneration than the maximum fairly appropriate to the work performed by the member, the Commissioner shall take such steps as are practicable to assign the member work of a class appropriate to the remuneration.
- (2) If the member cannot be assigned sufficient work of the kind referred to in subsection (1) or is unfit for or incapable of performing work appropriate to the remuneration:
 - (a) subject to paragraph (b), the Commissioner shall take such steps as are practicable to transfer the member under section 15, and

- (b) if such a transfer cannot be made or the member is unfit for or incapable of performing the work attached to another position of equal remuneration:
 - (i) the Industrial Authority shall reduce the employee's remuneration to the maximum determined by the Industrial Authority to be appropriate for the work performed by the member, and
 - (ii) the Commissioner may take such steps as are practicable to secure the transfer of the employee to a position as a member of the transit police service at that salary.
- (3) If a reduction of remuneration of a member of the transit police service under this section is certified by the Industrial Authority to have been made on the ground only that appropriate work or an appropriate position is not available, the member:
 - (a) remains eligible for promotion as if the member's remuneration had not been reduced, and
 - (b) is entitled to employment in the class of work to which the member's previous remuneration was appropriate, or transfer to a position to which that class of work is attached, as soon as the appropriate work or an appropriate position becomes available, in preference to any other member of the service whose salary has not been reduced.

18 Refusal of transfer

- (1) A member of the transit police service who refuses a transfer from one position to another under this Part may be dismissed by the Commissioner.
- (2) If the Commissioner is satisfied that the member of the transit police service has a valid and sufficient reason for refusing the transfer, the member may be allowed to decline the transfer without prejudice to any rights that the member would, had he or she not declined the transfer, have had to any future promotion or appointment.

19 Other employment

- (1) Except with the permission of the Commissioner, a member of the transit police service shall not engage in any trade, business or profession or in any other remunerative employment.
- (2) If:
 - (a) a member of the transit police service is the holder of any office or position, or
 - (b) is engaged in any employment whatever,otherwise than in connection with the duties of his or her position as a member of the service, the member shall at once notify the fact to the Commissioner, who may

require the member to resign the office or position or abstain from engaging in the employment.

- (3) The Commissioner may withdraw a permission under subsection (1) at any time.

Part 4 Conditions of employment

20 Conditions of employment

- (1) The Industrial Authority may, where the conditions of employment of any member of the transit police service are not fixed in accordance with the provisions of any other Act or law, fix the conditions of employment of the member.
- (2) The regulations may make provision for or with respect to the conditions of employment of members of the transit police service.
- (3) The regulations made for the purposes of subsection (2):
 - (a) shall have effect subject to any relevant award or industrial agreement, and
 - (b) shall have effect despite the provisions of subsection (1).
- (4) A reference in this section to conditions of employment does not include a reference to the rates of remuneration payable to a member of the transit police service.
- (5) (Repealed)

21 Determination of remuneration

- (1) Except in so far as provision is otherwise made by law, the remuneration of members of the transit police service shall be as determined from time to time by the Industrial Authority.
- (2) A member of the transit police service may sue for and recover the amount of the remuneration that is the subject of such a determination and payable to the member.

22 Industrial Authority to be employer for certain purposes

- (1) The Industrial Authority shall, for the purposes of any proceedings relating to a member of the transit police service held before a competent tribunal having power to deal with industrial matters, be taken to be the employer of the member, except for the purposes of any such proceedings relating to:
 - (a) the dismissal, suspension or reinstatement of the member, or
 - (b) the powers of the Commissioner with respect to the discipline, promotion or transfer of the member.
- (2) The Industrial Authority may enter into an agreement with any association or organisation representing any group or class of members of the transit police service

as to any industrial matters.

- (3) Such an agreement shall bind all members of the transit police service in the class or group affected by the agreement and no such member, whether a member of the association or organisation with which the agreement was entered into or not, shall have any right of appeal against the terms of the agreement.
- (4) Nothing in this section authorises:
 - (a) the Industrial Authority to act as an employer, or
 - (b) any function to be exercised by or in relation to the Industrial Authority,otherwise than for the purposes of and in accordance with this section.

23 Right of Crown to dispense with services

Nothing in this Act shall be construed or held to abrogate or restrict the right or power of the Crown, as existing apart from this Act, to dispense with the services of any person employed in the service of the Crown as a member of the transit police service.

24 No compensation

Except as provided in this or any other Act, a member of the transit police service is not entitled to any compensation as a result of the member's services being dispensed with or the member's remuneration being reduced.

Part 5 Discipline

25 Complaints against members

A complaint by any person against a member of the transit police service may be dealt with under Part 8A of the [Police Service Act 1990](#) in the same way as a complaint against a police officer, and the provisions of that Part apply, with any necessary modifications, to any such complaint.

26 Breaches of discipline

A member of the transit police service who:

- (a) commits any breach of this Act or the regulations, or
- (b) is disobedient, or
- (c) neglects or omits to discharge, or is incompetent in the discharge of, his or her duties, or
- (d) uses intoxicating beverages or drugs to excess while on duty or in uniform, or
- (e) is disrespectful to any person in authority, or

- (f) engages in insolent or indecorous behaviour, or
 - (g) uses any words or engages in an action subversive of discipline or calculated to impair the efficiency of, or bring discredit on, the service,
- is guilty of a breach of discipline.

27 Procedure for dealing with breaches of discipline

- (1) If the Commissioner considers that action should be taken against a member of the transit police service alleged to have committed a breach of discipline, the Commissioner may:
 - (a) direct the preferment of a departmental charge against the member, or
 - (b) if an offence appears to have been committed, direct the institution of court proceedings against the member for the offence.
- (1A) The provisions of Division 1 of Part 9 of the [Police Service Act 1990](#) relating to the jurisdiction of the Police Tribunal to deal with departmental charges against police officers apply, with any necessary modifications, to departmental charges against members of the transit police service.
- (2) Departmental charges other than those heard and determined by the Police Tribunal shall be dealt with by the Commissioner.
- (3) Subject to this Act, the regulations may:
 - (a) make provision for or with respect to:
 - (i) the manner of dealing with alleged breaches of discipline, and
 - (ii) the institution and conduct of proceedings before the Police Tribunal relating to departmental charges preferred against a member of the transit police service, and
 - (iii) the implementation of determinations and recommendations of the Police Tribunal in relation to charges against members of the service, and
 - (b) prescribe all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Part.

28 Punishment for breaches of discipline

- (1) If an alleged breach of discipline is dealt with by the Commissioner in accordance with the regulations and the member of the transit police service charged is found to have committed the breach or admits to the person or persons dealing with the breach that he or she committed the breach, the Commissioner:
 - (a) may decide to impose on the member any one or more of the following

punishments:

- (i) a caution,
 - (ii) a reprimand,
 - (iii) a fine,
 - (iv) a reduction in remuneration,
 - (v) a reduction to a lower classification or position as a member of the transit police service, or
- (b) may decide to dismiss the member or to direct that the member resign, or be allowed to resign, within such period as may be specified in the direction.
- (2) If the Commissioner, in the exercise of powers under this section, decides to direct that a member of the transit police service resign, or be allowed to resign, within a period specified in the direction, and the member does not resign within that period, the Commissioner may decide to dismiss the member.
- (3) Subject to Part 3 of the *Government and Related Employees Appeal Tribunal Act 1980*, a decision of the Commissioner under this section may be given effect to at any time.
- (4) A fine imposed by the Commissioner on a member of the transit police service may be recovered:
- (a) in any court of competent jurisdiction as a debt due to the Crown, or
 - (b) from the remuneration of the member, in accordance with the regulations.

29 Punishment where member guilty of offence

- (1) This section applies where a member of the transit police service is:
- (a) convicted in New South Wales of an offence that is punishable by imprisonment for a term of 12 months or more, or
 - (b) convicted elsewhere of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (c) convicted of an offence in proceedings instituted under section 27 (1) (b).
- (2) The Commissioner may impose on the member of the transit police service any one or more of the punishments that may be imposed under section 28 as if the member had, in accordance with that section, been dealt with for a breach of discipline and were liable to those punishments.

30 Suspension of members

- (1) If a member of the transit police service:
 - (a) is, in accordance with the regulations, charged with a breach of discipline, or
 - (b) is charged with having committed an offence referred to in section 27 (1) (b), or
 - (c) is charged with having committed an offence referred to in section 29 (1),the Commissioner may suspend the member from duty until the charge has been dealt with.
- (2) The Commissioner may lift the suspension of a member of the transit police service at any time.
- (3) Any remuneration payable to a suspended member of the transit police service shall be withheld during the period of suspension, unless the Commissioner otherwise directs.
- (4) Any such remuneration shall, unless the Commissioner otherwise directs, be forfeited if:
 - (a) the member is found to have committed the breach of discipline or admits to having committed the breach of discipline, or
 - (b) the member is convicted of the offence,unless it was due before the suspension or was paid pursuant to a direction under subsection (3).
- (5) This section has effect subject to the [Government and Related Employees Appeal Tribunal Act 1980](#).

Part 6 Miscellaneous

31 Eligibility for appointment to Public Service

- (1) A member of the transit police service with at least 5 years' satisfactory service as such may apply for a position in the Public Service as if the member were a public servant.
- (2) A member of the transit police service who applies for such a position, or is appointed or employed as a public servant, shall be taken (for the purposes of the [Public Sector Management Act 1988](#), the [Government and Related Employees Appeal Tribunal Act 1980](#) and the [Industrial Relations Act 1996](#) and for any other purposes) to be an officer of the Public Service in relation to the application, appointment or employment.
- (3) There is no right of appeal under the [Government and Related Employees Appeal](#)

Tribunal Act 1980:

- (a) for a person against the filling of a position in the Public Service by a member of the transit police service, or
 - (b) for a member of the transit police service against the filling of a position in the Public Service by another person.
- (4) For the purposes of this section, service is not satisfactory if it is of a kind prescribed by the regulations for the purposes of this section.

32 (Repealed)

33 Attachment of remuneration

- (1) If judgment has been entered in any court against any member of the transit police service for the payment of a sum of money, the person in whose favour the judgment is entered may serve on the Commissioner:
 - (a) a copy of the judgment certified under the hand of the registrar or other proper officer of the court in which the judgment is entered, and
 - (b) a statutory declaration stating that the judgment has not been satisfied by the judgment debtor, and setting out the amount due by the judgment debtor under the judgment.
- (2) As soon as practicable after the service on the Commissioner of a copy of a judgment and a statutory declaration in accordance with this section, the Commissioner must:
 - (a) notify the judgment debtor in writing of the service of the copy of the judgment and statutory declaration, and
 - (b) require the judgment debtor:
 - (i) to state in writing within a time to be specified by the Commissioner whether the judgment has been satisfied, and
 - (ii) if so, to furnish evidence that the judgment has been satisfied, and
 - (iii) if the judgment has not been satisfied, to state the amount then due under the judgment.
- (3) If the member of the transit police service fails to prove to the satisfaction of the Commissioner that the judgment has been satisfied, the Commissioner may:
 - (a) from time to time cause to be deducted from any money due to the member such sums as are, in the Commissioner's opinion, necessary to enable the judgment to be satisfied, and
 - (b) apply those sums in the manner provided by the following provisions of this

section.

- (4) A deduction must not be made under this section if it would reduce the amount to be received by the member to less than a sum per week equivalent to the amount ascertained in accordance with subsection (5).
- (5) The amount which, by virtue of subsection (4), is to be ascertained in accordance with this subsection must be ascertained by deducting \$8 from the basic wage in force under clause 15 of Schedule 4 to the [Industrial Relations Act 1996](#) before the deduction under subsection (3) is made.
- (6) If copies of more than one judgment and statutory declaration are served on the Commissioner in respect of a single judgment debtor, the judgments shall be dealt with under this section in the order in which copies of the judgments are served on the Commissioner.
- (7) Any deductions made under subsection (3) from money due to a member of the transit police service shall, as between the Crown and the member, be regarded as a payment by the Crown to the member.
- (8) If a person to whom a payment has been made under this section fails to notify the Commissioner immediately the judgment debt in respect of which the payment was made is satisfied, or is deemed to be satisfied, the person is liable, on conviction before a Local Court, to a penalty not exceeding 1 penalty unit.
- (9) If any deduction made in accordance with subsection (3) from money due to a judgment debtor exceeds the amount due under the judgment against the judgment debtor:
 - (a) the Commissioner must repay the amount of the excess, and
 - (b) in default of payment, the judgment debtor may recover that amount from the Crown in any court of competent jurisdiction.
- (10) This section does not apply in relation to any member of the transit police service who is an undischarged bankrupt.
- (11) Out of the sums deducted under subsection (3), there shall be retained by the Commissioner, to be paid to the Treasurer for credit of the Consolidated Fund, an amount equal to 5 per cent (or such other amount as the Governor may, by order, notify in the Gazette) of those sums, and the balance of those sums shall be paid to the judgment creditor.
- (12) If a payment is made to a judgment creditor under subsection (11), the Commissioner must forward to the judgment creditor a statement showing:
 - (a) the sums deducted under subsection (3) in respect of the judgment from money

due to the member of the transit police service concerned, and

(b) the amount retained by the Commissioner under subsection (11) out of those sums, and

(c) the balance of those sums paid to the judgment creditor under subsection (11).

(13) On payment being made to the judgment creditor under subsection (11):

(a) the judgment creditor must credit the member of the transit police service concerned with the sums referred to in subsection (12) (a), as shown in the statement forwarded to the judgment creditor, and

(b) the judgment in respect of which the payment was made shall for all purposes be taken to be satisfied to the extent of those sums, as so shown.

(14) In this section, **judgment** includes a judgment against joint defendants.

34 Bribes etc

(1) A member of the transit police service shall not take or solicit any bribe, pecuniary or otherwise, either directly or indirectly.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

(2) A person, whether or not a member of the transit police service, shall not:

(a) give or offer, or promise to give, any bribe, recompense or reward to a member of the transit police service, or

(b) make any collusive agreement with a member of the transit police service,

for the purpose of inducing the member to neglect the member's duty, or to conceal or connive at any act whereby any provisions of this Act or the regulations may be evaded.

Maximum penalty: 20 penalty units or imprisonment for 2 years or both, in addition to any other punishment to which the person may be liable.

(3) Proceedings for an offence under this section may be commenced by information laid within 2 years after the time when the offence was allegedly committed.

35 Uniforms etc

(1) A person who, not being a member of the transit police service:

(a) has in his or her possession any arms, ammunition, article of clothing, accoutrements or appointments of the service, and

(b) does not satisfactorily account for such possession,

is guilty of an offence.

Maximum penalty: 2 penalty units.

- (2) A person, not being a member of the transit police service, shall not:
- (a) without the permission of the Commissioner and otherwise than in the course of a stage play, a music hall or circus performance or a ball, wear the uniform, or any colourable imitation of the uniform, of a member of the transit police service, or
 - (b) for the purposes of or in connection with any business, occupation or employment, use the designation, rank or description that he or she previously held as a member of the service.

Maximum penalty: 2 penalty units.

- (3) A person, not being a member of the transit police service, shall not assume the name, designation or description of a member of the service or of any class of members of the service.

Maximum penalty: 2 penalty units or imprisonment for 6 months, or both.

- (4) A penalty under this section is in addition to any other punishment to which the person may be liable.
- (5) For the purposes of a prosecution under this section, a certificate by the Commissioner to the effect that a uniform described in the certificate is the uniform of a member of the transit police service is evidence of the matters certified.
- (6) Section 104 of the [Police Service Act 1990](#) does not operate to prevent a member of the transit police service from assuming or using, with the approval of the Commissioner of Police, any designation indicating that he or she is a member of the service.

36 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Nothing prevents proceedings for an offence under this Act or the regulations from being brought against a person who has ceased to be a member of the transit police service, but who was such a member when the offence was allegedly committed.

37 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the procedures to be adopted for promoting, and terminating the employment of, members of the transit police service, and
 - (b) the procedures to be adopted consequent on the promotion of members of the service, including the taking or making of an oath or affirmation of office, and
 - (c) the transfer of members of the service between positions, and
 - (d) the hours of attendance of members of the service, and
 - (e) the leave which may be granted to members of the service, and
 - (f) travelling and subsistence allowances for members of the service, allowances for the increased cost of living in distant parts of the State, and other allowances for members, and
 - (g) the exercise of functions of suspended, sick or absent members of the service by other members, and the exercise by members of the functions attached to vacant positions.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

38-40 (Repealed)

41 Savings, transitional and other provisions

Schedule 1 has effect.

Schedule 1 Savings, transitional and other provisions

(Section 41)

1 Definition

In this Schedule:

transferred employee means a person employed as a member of the transit police service by virtue of this Act.

2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Any such provision shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.

3 Transferred employee seeking appointment to Public Service

For the purposes of section 31 (Eligibility for appointment to Public Service), service by a transferred employee before the commencement of this clause on the staff of the State Rail Authority shall be regarded as service as a member of the transit police service.

4 Conditions of employment

A transferred employee shall (until other provision is duly made under Part 4) be employed in accordance with the awards, industrial agreements and determinations that would have applied to the transferred employee if the transferred employee:

- (a) had not become employed as a member of the transit police service by virtue of this Act, and
- (b) were still on the staff of the State Rail Authority.

5 Preservation of rights of transferred employee

(1) This clause applies where a transferred employee was, immediately before the commencement of section 5:

- (a) a contributor to a superannuation scheme, or
- (b) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) A transferred employee referred to in subclause (1):

- (a) shall retain any rights accrued or accruing to him or her as such a contributor or person, and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before the commencement of this clause, and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such a contributor or person during his or her

service as a member of the transit police service.

- (3) Service as a member of the transit police service shall be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred.
- (4) The transferred employee shall be regarded as an officer or employee, and the Commissioner shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (5) If the transferred employee would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:
 - (a) he or she is not so entitled on becoming (whether on the commencement of this clause or at any later time while being a member of the transit police service) a contributor to any other superannuation scheme, and
 - (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Commissioner in any case where he or she becomes a contributor to any such other superannuation scheme.
- (6) Subclause (5) does not prevent the payment to the transferred employee (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.
- (7) The transferred employee is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.
- (8) In this clause:

superannuation scheme means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under an Act.

6 Leave entitlements

Transferred employees are entitled to continue to accrue any sick, recreational or extended leave not taken immediately before the commencement of section 5.

7 Right of transfer back to SRA

- (1) Not later than 3 years after the commencement of section 5, a transferred employee may apply, as if the transferred employee were a member of the staff of the State Rail Authority, for a position on that staff.

- (2) A transferred employee who applies for such a position, or is appointed or employed as a member of that staff, shall be taken for all purposes to be a member of that staff in relation to the application (including any requirements relating to eligibility for appointment to the position), appointment or employment.
- (3) Service as a member of the transit police service by a transferred employee who is appointed to such a position shall be regarded as service on the staff of the State Rail Authority.

8 Pending appeals

If an appeal concerning a transferred employee is pending to a Transport Appeal Board on the commencement of section 5, the appeal may continue to be heard and disposed of and the decision on the appeal shall, as far as practicable, be given effect to by the Commissioner.