

Transport Appeal Boards Act 1980 No 104

[1980-104]



New South Wales

Status Information

Currency of version

Historical version for 29 June 2000 to 8 September 2002 (accessed 28 April 2024 at 0:46)

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)

Authorisation

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File last modified 3 July 2002

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Transport Appeal Boards Act 1980 No 104



New South Wales

An Act to provide for the constitution of Transport Appeal Boards and to make provision with respect to appeals by officers and employees of the State Rail Authority and the State Transit Authority.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Transport Appeal Boards Act 1980*.

2 Commencement

- (1) This section, section 1 and section 35 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on 1 July 1980.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

appeal means an appeal to a Board.

Authority means the State Rail Authority or the State Transit Authority.

Board means a Transport Appeal Board constituted under this Act.

Chairperson means the Chairperson of Transport Appeal Boards appointed under section 5 (1).

functions includes powers, authorities and duties.

member means a member of a Board.

officer includes employee.

regulation means a regulation under this Act.

secretary means the secretary to the Transport Appeal Boards.

Vice-Chairperson means a Vice-Chairperson of Transport Appeal Boards appointed under section 6 (1).

- (2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.
- (3) In a Schedule to this Act, a reference to a subclause is, unless a contrary intention appears, a reference to a subclause of the clause in which the reference occurs.

Part 2 Transport Appeal Boards

5 Constitution of Boards

- (1) The Governor may appoint a Chairperson of Transport Appeal Boards.
- (2) A Transport Appeal Board shall, in relation to a particular appeal, consist of:
 - (a) the Chairperson,
 - (b) 1 member who shall be an officer authorised in accordance with Part 1 of Schedule 1, and
 - (c) 1 member who shall be a nominated member within the meaning of clause 5 or 8 of Part 2 of Schedule 1.

6 Vice-Chairperson

- (1) The Governor may appoint not more than 2 Vice-Chairpersons of Transport Appeal Boards.
- (1A) The office of Vice-Chairperson is a part-time office.
- (2) Where the Chairperson is absent from any meeting of a Board, a Vice-Chairperson nominated by the Chairperson in advance (or, if the Chairperson has not done so, by the secretary) may exercise the functions of the Chairperson and shall be deemed to be the Chairperson at that meeting.

7 Term of office of Chairperson and Vice-Chairperson

- (1) The Chairperson and Vice-Chairpersons shall hold office for such term, not exceeding 5 years, as may be specified in their respective instruments of appointment.
- (2) The provisions of Part 2 of the [Public Sector Management Act 1988](#) do not apply to or in respect of the appointment of any person as Chairperson or Vice-Chairperson, and a person is not, in the person's capacity as Chairperson or Vice-Chairperson, subject to

those provisions.

8 Functions of Boards, the Chairperson, Vice-Chairperson and members

A Board, the Chairperson, a Vice-Chairperson and the members shall have and may exercise the functions conferred upon it or them by or under this Act, the [Transport Administration Act 1988](#) or any other Act.

9 Voting at meetings of Boards

At any meeting of a Board each member present shall have 1 vote and the decision of the majority of the members shall be the decision of the Board.

10 Disqualification

No member of a Board shall take part in the hearing of an appeal against any officer in a branch of which that member is the head.

11 Sittings of Boards

A Board shall, unless the Chairperson otherwise directs, sit in Sydney for the hearing of appeals.

12 Members of a Board

Schedule 1 has effect.

Part 3 Appeals

13 Lodgment of appeals

An appeal shall be lodged with the secretary within 21 days after notice in writing of the decision to be appealed against is given to the appellant.

14 Time for hearing of appeals

- (1) Subject to subsection (2), an appeal shall be heard by a Board within 30 days from the date of its lodgment with the secretary.
- (2) Where:
 - (a) the volume of work confronting a Board is such that an appeal cannot be heard conveniently within 30 days,
 - (b) owing to illness or unavailability of witnesses, the Chairperson or members of a Board, the appeal cannot be heard within 30 days,
 - (c) criminal proceedings have been commenced against an appellant for any offence (being criminal proceedings in respect of which the issues required to be determined are so closely related to the issues for determination by a Board that,

in the opinion of the Board, it is reasonable to adjourn the hearing of the appeal pending the outcome of the criminal proceedings), or

- (d) the parties to the proceedings before a Board agree that the hearing should be adjourned,

the Board may adjourn the hearing of the appeal to a date later than 30 days from the date of lodgment of the appeal with the secretary.

15 Convening of a meeting of a Board

Upon the lodgment of an appeal, the secretary shall convene a meeting of a Board and shall cause to be given to the appellant at least 7 days' notice of the hearing of his or her appeal.

16 Order of presentation of cases

- (1) At the hearing of an appeal by a Board, the employer's case shall be presented first.
- (2) Nothing in subsection (1) removes from an appellant or any other person the onus of proving any ground on which the appellant or person relies.

17 Evidence

- (1) A Board is not bound by the rules or practice as to evidence and may, subject to subsection (2), inform itself on any matter in such manner as it thinks fit.
- (2) A Board shall not inform itself on, or take into consideration, any matter which has not been disclosed in evidence at a sitting of the Board if the matter is one which ought, in the interests of justice, to be available for challenge or testing by the persons entitled to be present at the sitting.
- (3) Nothing in subsection (2) prevents a Board from informing itself on, or taking into consideration, any matter of which it is entitled to take judicial notice.

18 Discovery of documents, attendance of witnesses etc

- (1) In relation to an appeal, the Chairperson or a Vice-Chairperson, by instrument in writing issued before or during the hearing of the appeal by a Board:
 - (a) may require a person, being a party to the appeal or the employer of a party to the appeal, to produce, on or before such date as is specified in the instrument, for the inspection of any other party to the appeal so specified, any document or exhibit relevant to the appeal and which is so specified,
 - (b) may require a party to the appeal to do either or both of the following things, namely:
 - (i) to lodge with the Board, on or before such date as is specified in the

instrument, a written case setting out the arguments on which the person relies in relation to the appeal,

- (ii) to serve, on or before such date as is specified in the instrument, on any other such person so specified, a copy of a written case referred to in subparagraph (i)
 - (c) may require the parties to the appeal to lodge with the Board, on or before such date as is specified in the instrument, a statement of such facts or matters as are agreed upon between them in relation to the appeal,
 - (d) may require any person to appear before the Board and to give evidence, and
 - (e) may require any person to produce before the Board any document or exhibit relevant to the appeal.
- (2) A person who fails or neglects to comply with a requirement made of the person under subsection (1) is guilty of an offence against this Act and liable on conviction before a Local Court constituted by a Magistrate sitting alone to a penalty not exceeding 5 penalty units.

19 Administration of oath

Any member of a Board may administer an oath to any person giving evidence before the Board.

20 Representation

An appellant before a Board shall be entitled to be represented by a barrister, solicitor or agent, who may examine witnesses and address the Board on his or her behalf.

21 Adjournment

- (1) Subject to section 14, a Board may from time to time adjourn the hearing of an appeal to such times, dates and places and for such reasons as it thinks fit.
- (2) In the absence from a sitting of a Board of 1 or 2 members of the Board, the remaining member or members may exercise the Board's powers under subsection (1).

22 Withdrawal of appeals

- (1) An appellant may at any time withdraw his or her appeal, whether or not a Board has commenced to consider the appeal.
- (2) Where the consideration by a Board of an appeal has not commenced, the appellant may withdraw his or her appeal by notifying the secretary, in writing, that he or she withdraws his or her appeal.

- (3) Where the consideration by a Board of an appeal has commenced, the appellant may withdraw his or her appeal by informing the Board that he or she withdraws his or her appeal.

23 Decision of a Board

- (1) Subject to subsection (1A), a Board may confirm or modify any decision appealed against or make any such order thereon as it thinks fit.
- (1A) If a Board modifies the decision of an Authority in respect of disciplinary proceedings against an officer of the Authority, it may only impose as a substituted punishment:
 - (a) a fine, or
 - (b) a suspension or further suspension without pay.
- (2) Except as provided in section 24, a decision of a Board shall be final and conclusive.

24 Appeal against a Board's decision in certain cases

- (1) If, as the result of a Board's decision on an appeal, the punishment involves:
 - (a) dismissal,
 - (b) reduction of rank, position, grade or pay, or
 - (c) suspension for a period of 1 week or more,the appellant may, within 7 days after being informed of the decision, appeal from the decision:
 - (d) where the appellant was an officer of the State Rail Authority at the time that the matter, the subject of his or her appeal to the Board, arose—to that Authority,
 - (e) where the appellant was an officer of the State Transit Authority at the time that the matter, the subject of his or her appeal to the Board, arose—to that Authority, or
 - (f) (Repealed)
- (2) An Authority may hear, and may confirm, modify or otherwise determine an appeal made to it under this section.
- (3) A decision of an Authority made under subsection (2) shall be final and conclusive.
- (4) In the hearing of an appeal under this section:
 - (a) the Authority may require a person giving evidence before it to give that evidence on oath or by way of a declaration, and
 - (b) the appellant shall have the like rights and privileges as the appellant had before

the Board from which the appeal is made.

25 (Repealed)

26 Application of the [Defamation Act 1974](#)

For the purposes of section 18 of the [Defamation Act 1974](#), the proceedings relating to any appeal under this Part shall be deemed to be an inquiry within the meaning of that section.

27 Offences relating to secrecy of information

A person appearing at a hearing of any appeal under this Part shall not be guilty of an offence against or otherwise be in breach of any law relating to the confidentiality or secrecy of information in respect of anything disclosed by the person at the hearing which is relevant to the appeal.

Part 4 General

28 Costs and expenses of Boards

The administrative costs and expenses of Transport Appeal Boards shall be charged upon and be payable out of the Consolidated Revenue Fund.

29 Records of proceedings

It shall be the duty of the secretary to keep a record of all proceedings of a Board and of decisions arrived at by a Board.

30 Supply of copies of statements etc to appellant

- (1) Where an officer of the State Rail Authority or the State Transit Authority has lodged an appeal against punishment imposed, the officer shall, on application, be entitled to be supplied by the Authority without cost to the officer with copies of all statements or reports which have been submitted to the Authority in connection with the incident or incidents which formed the basis for the punishment against which the officer is appealing.
- (2) Any copies referred to in subsection (1) shall, where practicable, be supplied to the appellant at least 3 days before the hearing of his or her appeal.
- (3) No proceedings, civil or criminal, shall lie or be allowed against the State Rail Authority or the State Transit Authority, or against the person who has made any statement or report a copy of which is supplied in accordance with this section, for or in relation to any matter contained in the statement or report which is, or is alleged to be, defamatory.

31 Reference of certain matters to Chairperson or Vice-Chairperson for investigation

- (1) The Minister by instrument in writing may refer to the Chairperson or a Vice-Chairperson for investigation and report any matter relating to the promotion or discipline of officers of the State Rail Authority or the State Transit Authority.
- (2) The State Rail Authority or the State Transit Authority by instrument in writing may, in relation to its officers, refer to the Chairperson or a Vice-Chairperson for investigation and report any matter relating to promotion or discipline.
- (3) The Chairperson or Vice-Chairperson, as the case may be, shall carry out an investigation and submit a report in accordance with a reference made under subsection (1) or (2).

32 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.
- (2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to:
 - (a) the method of appealing to, and the procedure of, a Board,
 - (b) subject to the [Statutory and Other Offices Remuneration Act 1975](#), the payment of salary, fees and allowances to the Chairperson, Vice-Chairpersons and members,
 - (c) the payment of witnesses' and other expenses,
 - (d) the issue of transport passes to witnesses and appellants,
 - (e) the payment of the salaries of witnesses and appellants during proceedings on an appeal, and
 - (f) frivolous appeals.
- (3) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors, or
 - (b) apply differently according to different factors of a specified kind,or may do any combination of those things.
- (4) The regulations may impose a penalty not exceeding 1 penalty unit for an offence against the regulations.

33 Proceedings for offences

Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

34 Savings and transitional provisions

Schedule 2 has effect.

35 Rights of appeal to any other board or tribunal barred

(1) Notwithstanding anything contained in any other Act, where, in respect of a decision:

- (a) an officer has, at any time during the period commencing on the date of assent to this Act and ending on the day preceding the day referred to in section 2 (2), a right to appeal to an Appeals Board constituted under the [Government Railways Act 1912](#) or an Appeal Board constituted under the [Transport Act 1930](#), or
- (b) an officer has, at any time on or after the day referred to in section 2 (2), a right to appeal to a Transport Appeal Board constituted under this Act,

that officer does not have a right to appeal to any other statutory appeals board or statutory appeals tribunal in respect of that decision.

(2) Where anything contained in any other Act conflicts with anything contained in subsection (1), subsection (1) shall prevail.

Schedule 1 Members of a Board

Part 1 Member authorised by employing Authority

1 Authorisation of an officer of an Authority as a member of a Board

Where an appeal is lodged by an officer of an Authority, the Authority concerned shall, on being advised of the lodging of the appeal, authorise an officer of that Authority (other than an officer of the branch to which the appellant belongs) to be a member of the Board hearing the appeal.

2 (Repealed)

Part 2 Member nominated by industrial union

3 Definitions

In this Part, except in so far as the context or subject-matter otherwise indicates or requires:

industrial union means an industrial organisation of employees within the meaning of the [Industrial Relations Act 1996](#), or an association of employees registered as an

organization under the *Conciliation and Arbitration Act 1904* of the Parliament of the Commonwealth, as subsequently amended.

prescribed time, in relation to an appeal, means:

(a) if no time is prescribed for the purposes of paragraph (b)—the expiration of the period of 5 days after the day on which notice of the decision appealed against was given to the appellant, or

(b) such time as may be prescribed for the purposes of this paragraph,

or such earlier time as the Chairperson, at the request or with the consent of the appellant, determines.

secretary, in relation to an industrial union, means the secretary or chief executive officer of the industrial union.

4 Nomination of a member of a Board by an industrial union

(1) The secretary of an industrial union of which officers of the State Rail Authority or the State Transit Authority are, or are entitled or eligible to be, members:

(a) may, by instrument in writing furnished to the secretary to the Transport Appeal Boards, nominate an officer of any of those Authorities to be a representative on a Board hearing appeals lodged by officers of the State Rail Authority or the State Transit Authority, and

(b) may, by instrument in writing so furnished, revoke that nomination.

(2) (Repealed)

5 Nominated members

(1) For the purposes of section 5 (2) (c), **the nominated member**, in relation to an appeal by an officer of an Authority, means an officer of any Authority, being:

(a) if only 1 representative's nomination made under clause 4 (1) by the secretary of an industrial union of which the appellant is a member, or, if the officer is not a member of any industrial union, of an industrial union of which the officer is entitled or eligible to be a member, remains unrevoked at the prescribed time—that representative,

(b) if 2 or more representatives' nominations made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a), or of each of 2 or more industrial unions referred to in paragraph (a), remain unrevoked at the prescribed time—such one of those representatives:

(i) as the appellant nominates by instrument in writing furnished to the secretary to the Transport Appeal Boards within such period after the prescribed time as

the Chairperson allows before the hearing of the appeal commences, or

- (ii) if the appellant does not make such a nomination within that period or any such further period or periods—as the Chairperson nominates before the hearing commences, or

(c) if:

- (i) there is no nomination made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a), or
- (ii) no nomination made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a) remains unrevoked at the prescribed time,

such officer as the Chairperson nominates before the hearing commences.

(2) (Repealed)

6 Deemed revocation of nominations

Without affecting clause 4 (1) (b), a person's nomination as a representative under clause 4 shall, for the purposes of this Part, be deemed to be revoked:

- (a) if the person notifies the secretary to the Transport Appeal Boards, by instrument in writing, that the person does not desire to continue as a representative so nominated,
- (b) if the person ceases to be an officer of the Authority to which the person belonged at the time of the person's nomination, or
- (c) upon the expiration of the period (if any) specified in the instrument of the person's nomination as the period for which the nomination is to remain in force.

7 Nominations may be general or particular

- (1) A nomination may be made under clause 4 generally or for a particular appeal and, unless expressed to have been made for a particular appeal, shall be deemed to have been made generally.
- (2) While a nomination made by the secretary of an industrial union under clause 4 for a particular appeal remains unrevoked, a nomination made generally by that secretary shall, for the purposes of that appeal only, be deemed to have been revoked.
- (3) A nomination made under clause 4 for a particular appeal has no force or effect for the purposes of any other appeal.
- (4) For the purposes only of a particular appeal, where:
 - (a) a nomination made under clause 4 remains unrevoked at the prescribed time, and
 - (b) the nomination is revoked before the appeal is determined by a Board,

the nomination shall, unless the Chairperson otherwise determines, be deemed to remain unrevoked until the appeal is so determined.

8 Vacancy in office of nominated member

Where, in relation to an appeal, a vacancy arises in the office of the nominated member after the prescribed time and before the appeal is determined, then, for the purposes of section 5 (2) (c), **the nominated member**, in relation to that appeal, means an officer nominated by the Chairperson (being an officer of the Authority to which the member in whose office the vacancy arose belonged).

9 Acceptance of certain nominations not in writing

The secretary to the Transport Appeal Boards may accept a nomination referred to in clause 5 (1) (b) (i) notwithstanding that it is not communicated to the secretary by an instrument in writing.

Schedule 2 Savings and transitional provisions

(Section 34)

1 Definitions

In this Schedule:

appointed day means the day referred to in section 2 (2).

cognate Acts means the *Government Railways (Amendment) Act 1980* and the *Transport (Amendment) Act 1980*.

former appellate body means an Appeals Board constituted under section 87 of the *Government Railways Act 1912* or an Appeal Board constituted under section 114 of the *Transport Act 1930* as in force before the appointed day.

2 Appeals to a former appellate body

- (1) Subject to this clause, any proceedings commenced and pending under Division 5 of Part 8 of the *Government Railways Act 1912* or under Division 3 of Part 11 of the *Transport Act 1930* immediately before the appointed day shall be heard and disposed of as if this Act, the *Transport Authorities Act 1980* and the cognate Acts had not been enacted.
- (2) Subject to this clause, proceedings may be commenced under Division 5 of Part 8 of the *Government Railways Act 1912* or under Division 3 of Part 11 of the *Transport Act 1930* in respect of any decision made before the appointed day, and may be heard and disposed of, as if this Act, the *Transport Authorities Act 1980* and the cognate Acts had not been enacted.
- (3) For the purposes of subclauses (1) and (2):

- (a) section 87 (1) (b) of the *Government Railways Act 1912*, as in force immediately before the appointed day, shall, if an officer is not authorised under that paragraph in respect of a particular appeal as at the appointed day, be deemed, to the extent that it applies to that appeal, to have been amended by the omission of the words “railway service as the Commissioners authorise” and by the insertion instead of the words “State Rail Authority as the Authority authorises”, and
 - (b) section 114 (1) (b) of the *Transport Act 1930*, as in force immediately before the appointed day, shall, if:
 - (i) an officer is not authorised under that paragraph in respect of a particular appeal as at the appointed day, and
 - (ii) the appellant was, immediately before the appointed day, not an officer of the Department of Motor Transport,be deemed, to the extent that it applies to that appeal, to have been amended by the omission of the words “Commissioner for Road Transport and Tramways as the Commissioner” and by the insertion of the words “Urban Transit Authority as the Authority”.
- (4) An Appeals Board under the *Government Railways Act 1912* or an Appeal Board under the *Transport Act 1930* may, in proceedings referred to in subclause (1) or (2), make such a determination as appears to it to be appropriate having regard to the enactment of this Act, the *Transport Authorities Act 1980* and the cognate Acts.
 - (5) A determination of an Appeals Board or an Appeal Board, as the case may be, in proceedings referred to in subclause (1) or (2) shall be given effect to, according to its spirit and intention, by all persons and authorities having authority in relation to the subject-matter of the proceedings.
 - (6) Subclauses (1) and (2) do not extend to the allowing or determining of further appeals in accordance with section 93 of the *Government Railways Act 1912* or section 115F of the *Transport Act 1930* as in force before the appointed day.
 - (7) In any case where a further appeal referred to in subclause (6) was lodged before the appointed day in accordance with the provisions relating to any such appeals but was not finally dealt with as at the appointed day, that further appeal shall be dealt with as if it had been lodged after the appointed day in respect of a decision of a Board and in accordance with the provisions relating to such an appeal.
 - (8) In any case where a further appeal referred to in subclause (6) could have been lodged against a decision had the provisions referred to in that subclause remained in force after the appointed day, an appeal against that decision may be lodged and dealt with in accordance with section 24.

3 Regulations

- (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) The provisions of clause 18 (2)–(4) of Schedule 8 to the *Transport Authorities Act 1980* apply to and in respect of regulations made under this clause in the same way as they apply to and in respect of regulations made under clause 18 of that Schedule.

4 Vice-Chairperson holding office prior to commencement of *Transport Appeal Boards (Amendment) Act 1988*

A person holding office as Vice-Chairman immediately before the day on which the *Transport Appeal Boards (Amendment) Act 1988* commences ceases to hold office as such on that day provided that the person who ceases to hold office is entitled to such compensation for loss of remuneration as the Statutory and Other Offices Remuneration Tribunal determines.