

# Government and Related Employees Appeal Tribunal Act 1980 No 39

[1980-39]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Government and Related Employees Appeal Tribunal \(Education Ancillary Staff\) Amendment Act 1987 No 241](#) (not commenced)
- **See also**  
[Courts Legislation Amendment Bill 2002](#)

### Authorisation

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# Government and Related Employees Appeal Tribunal Act 1980 No 39



New South Wales

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# Government and Related Employees Appeal Tribunal Act 1980 No 39



New South Wales

An Act to constitute the Government and Related Employees Appeal Tribunal, to specify the circumstances in which government and related employees may appeal to the Tribunal against decisions relating to their promotion and discipline, and to otherwise provide for the functions of the Tribunal; and to repeal the *Public Service (Promotion Appeals) Act 1902*, the *Crown Employees Appeal Board Act 1944* and certain other enactments.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Government and Related Employees Appeal Tribunal Act 1980*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.
- (3) For the purpose only of enabling the Tribunal to be constituted in accordance with this Act on or after (but not before) the day appointed and notified under subsection (2), appointments and nominations may be made in accordance with Part 2 and Schedules 1 and 2, and any act, matter or thing may be done, before that day, as if the whole of this Act commenced on the date of assent to this Act.

### 3 (Repealed)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 under section 20 or 24.

**association of employees** means an industrial union whose name for the time being is included in Schedule 3.

**Chairperson** means a person for the time being appointed as a Chairperson of the Tribunal under section 10 (1).

**employee** means:

- (a) a person who is an officer within the meaning of section 3 (1) of the *Public Sector Management Act 1988*, a term officer within the meaning of that subsection or a temporary employee within the meaning of that subsection,
- (b) a person who is an officer within the meaning of section 4 (1) of the *Education Commission Act 1980* or a temporary employee within the meaning of that subsection,
- (c) a person who is employed, whether permanently or otherwise, in the service of an employing authority,
- (c1) a person who is a member of the transit police service within the meaning of section 4 of the *Police Department (Transit Police) Act 1989*,
- (d) a person who is 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) a person (not being a person to whom paragraph (a), (b), (c), (c1) or (d) applies) who is employed in the service of the Crown but not in the Public Service or by an employing authority.

**employer** means:

- (a) in relation to an employee of the class referred to in paragraph (a) of the definition of “employee”:
  - (i) for the purposes of those provisions of this Act relating to the membership and constitution of the Tribunal—the Public Employment Industrial Relations Authority, and
  - (ii) for the purposes of those provisions of this Act relating to the making of appeals and the hearing of appeals—the person against whose decision the appeal is made, being, as the case may require, the Public Employment Industrial Relations Authority or the appropriate Department Head within the meaning of section 3 (1) of the *Public Sector Management Act 1988*,
- (b) in relation to an employee of the class referred to in paragraph (b) of that

definition:

- (i) for the purposes of those provisions of this Act relating to the membership and constitution of the Tribunal—the appropriate Director-General within the meaning of section 4 (1) of the *Education Commission Act 1980*, and
  - (ii) for the purposes of those provisions of this Act relating to the making of appeals and the hearing of appeals—the person against whose decision the appeal is made, being, as the case may require, the appropriate Director-General or a prescribed officer within the meaning of section 82 of the *Education Commission Act 1980*,
- (c) in relation to an employee of the class referred to in paragraph (c) of that definition, the employing authority in whose service the employee is employed,
- (c1) in relation to an employee of the class referred to in paragraph (c1) of that definition—the Commissioner of Police,
- (d) in relation to an employee of the class referred to in paragraph (d) of that definition:
- (i) where the employee is an officer of the Legislative Council or under the separate control of the President of the Legislative Council—the President,
  - (ii) where the employee is an officer of the Legislative Assembly or under the separate control of the Speaker of the Legislative Assembly—the Speaker, or
  - (iii) where the employee is under the joint control of the President of the Legislative Council and the Speaker of the Legislative Assembly—the President and Speaker jointly, and
- (e) in relation to an employee of the class referred to in paragraph (e) of that definition:
- (i) for the purposes of those provisions of this Act relating to the membership and constitution of the Tribunal—the Public Employment Industrial Relations Authority, and
  - (ii) for the purposes of those provisions of this Act relating to the making of appeals and the hearing of appeals—the person in whose service the employee is employed.

**employing authority** means, subject to subsection (8), a person whose name is included in Schedule 4.

**function** includes powers, authorities and duties.

**industrial union** means:



- (a) an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996*, and
- (b) an association of employees registered as an organization under the *Conciliation and Arbitration Act 1904*, as subsequently amended, of the Parliament of the Commonwealth.

**judicial office** has the same meaning as in section 52 (1) of the *Constitution Act 1902*.

**notice of appeal** means a notice of appeal lodged with the Registrar under section 28.

**office** includes position.

**Public Employment Industrial Relations Authority** means the Public Employment Industrial Relations Authority constituted by the *Public Sector Management Act 1988*.

**Public Service** has the meaning ascribed to that expression by section 3 (1) of the *Public Sector Management Act 1988*.

**Registrar** means the person for the time being appointed, as referred to in section 18, as Registrar of the Tribunal.

**regulation** means a regulation under this Act.

**Senior Chairperson** means the person for the time being appointed as Senior Chairperson of the Tribunal under section 7 (1).

**Tribunal** means the Government and Related Employees Appeal Tribunal established under section 5 (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) A reference in this Act to:
  - (a) the appointment of an employee to fill a vacant office includes a reference to the appointment of an 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).
- (4) A reference in this Act to the hearing of an appeal includes a reference to the determination of the appeal and the hearing and determination of any business arising out of the appeal.
- (5) A reference in this Act to an approved form is a reference to a form in or to the effect of a form approved by the Senior Chairperson.

- (6) The Governor may, by proclamation published in the Gazette, amend Schedule 3:
- (a) by inserting therein the name of any industrial union whose members, in the opinion of the Governor, consist of, or consist of a substantial number of, employees,
  - (b) by omitting therefrom the name of any industrial union whose members, in the opinion of the Governor, no longer consist of a substantial number of employees, or
  - (c) by omitting therefrom the name of any industrial union which has changed its name or has amalgamated with one or more other industrial unions if the industrial registrar under the *Industrial Arbitration Act 1940* has made the record required by that Act of the change or amalgamation and by inserting therein the changed name of the industrial union or the name of the industrial union which comprises the industrial unions which have amalgamated, as the case may require.
- (7) Where the industrial registrar under the *Industrial Relations Act 1996* has made the record required by that Act of the change of name of an industrial union whose name, before the change, was included in Schedule 3 or of the amalgamation, with one or more other industrial unions, of an industrial union whose name, before the amalgamation, was included in that Schedule, the industrial union which bears the changed name or which comprises the industrial unions which have amalgamated, as the case may be, shall be deemed to be an association of employees within the meaning of this Act.
- (8) Where the name of a person is included in Schedule 4 in respect of a person or class of persons, the firstmentioned person is, for the purposes of this Act, an employing authority only in respect of that other person or class of persons.
- (9) The Governor may, by proclamation published in the Gazette, amend Schedule 4:
- (a) by inserting therein:
    - (i) the name of any person, whether or not in respect of any other person or class of persons, or
    - (ii) in respect of an employing authority, a person or class of persons,
  - (b) by omitting therefrom:
    - (i) the name of any person, whether or not in respect of any other person or class of persons, or
    - (ii) in respect of an employing authority, a person or class of persons, or
  - (c) by altering:

- (i) the name of any person, or
- (ii) a class of persons.

(10) A reference in this Act to the selection of a member of the Tribunal as an employer's representative or an employee's representative includes a reference to the selection of such a member by a person authorised in that behalf by the employer or the association of employees, as the case may be, entitled in accordance with this Act to make the selection.

(11) The Senior Chairperson or a Chairperson may be referred to as the Senior Chairman, Senior Chairwoman, Chairman or Chairwoman, as the case requires.

## **Part 2 Government and Related Employees Appeal Tribunal**

### **5 The Tribunal**

- (1) There shall be a Government and Related Employees Appeal Tribunal.
- (2) Subject to this Act, the members of the Tribunal are the Senior Chairperson, the Chairpersons and the persons for the time being nominated in accordance with this Act as employers' representatives and employees' representatives.

### **6 Functions of the Tribunal**

- (1) The Tribunal shall have and may exercise the functions conferred upon it by or under this or any other Act.
- (2) In the exercise of its functions, the Tribunal shall do all such things as are necessary to ensure:
  - (a) that appeals are set down for hearing with as much expedition as is reasonably possible, and
  - (b) that the hearing of appeals is concluded within as short a period as is reasonably possible.

### **7 Senior Chairperson**

- (1) The Governor may appoint any qualified person to be the Senior Chairperson of the Tribunal.
- (2) A person is qualified to be appointed as the Senior Chairperson if the person:
  - (a) holds or has held a judicial office, or
  - (b) is a legal practitioner of at least 7 years' standing.

## **8 Term of office of Senior Chairperson**

The Senior Chairperson shall, subject to this Act, be appointed for such term, not exceeding 7 years, as shall be specified in the instrument of the Senior Chairperson's appointment and shall, if otherwise qualified, be eligible for reappointment as Senior Chairperson.

## **9 Acting Senior Chairperson**

(1) The Governor may appoint:

- (a) a person qualified to be appointed as the Senior Chairperson, or
- (b) a Chairperson,

to be Acting Senior Chairperson of the Tribunal during any vacancy in the office of Senior Chairperson or any illness or absence of the Senior Chairperson.

(2) While holding office, the Acting Senior Chairperson of the Tribunal:

- (a) shall have and may exercise the functions of the Senior Chairperson, and
- (b) shall be entitled to such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Acting Senior Chairperson.

## **10 Chairperson**

- (1) The Governor may appoint one or more qualified persons to be a Chairperson of the Tribunal or Chairpersons of the Tribunal.
- (2) A person is qualified to be appointed as a Chairperson if the person has, in the opinion of the Governor, suitable qualifications and experience to enable the person properly to perform the functions of a Chairperson.

## **11 Term of office of Chairperson**

A Chairperson shall, subject to this Act, be appointed for such term, not exceeding 7 years, as shall be specified in the instrument of the Chairperson's appointment and shall, if otherwise qualified, be eligible for reappointment as a Chairperson.

## **12 Provisions relating to the offices of Senior Chairperson, Acting Senior Chairperson and Chairperson**

Schedule 1 has effect with respect to the offices of Senior Chairperson, Acting Senior Chairperson and Chairperson.

## **13 Constitution of the Tribunal**

- (1) The Tribunal shall, for the purpose of hearing an appeal, be constituted by 3 members

comprising:

- (a) the Senior Chairperson or a Chairperson selected by the Senior Chairperson,
  - (b) an employer's representative qualified and selected in accordance with section 14, and
  - (c) an employee's representative qualified and selected in accordance with section 15.
- (2) The Senior Chairperson shall not select a Chairperson to be a member of the Tribunal for the purpose of hearing an appeal under section 24 unless the Chairperson is a legal practitioner within the meaning of the *Legal Profession Act 1987* or a person qualified to be admitted as such a legal practitioner.
- (3) In proceedings by or against the Tribunal no proof shall be required (until evidence is given to the contrary) of:
- (a) the constitution of the Tribunal, or
  - (b) the appointment, nomination or selection of any member of the Tribunal.

#### **14 Employers' representatives**

The employer's representative shall be a person:

- (a) whose name is included in the panel of persons nominated in accordance with this Act by the appellant's employer, and
- (b) who is selected, as nearly as practicable in accordance with the order of preference set out in the nomination referred to in clause 1 of Schedule 2, by the employer.

#### **15 Employees' representatives**

(1) The employee's representative shall be a person:

- (a) whose name is included in the panel of persons nominated in accordance with this Act by the appropriate association of employees, and
  - (b) who is selected, as nearly as practicable in accordance with the order of preference set out in the nomination referred to in clause 1 of Schedule 2, by the appropriate association of employees.
- (2) A reference in subsection (1) to the appropriate association of employees is a reference:
- (a) where only one notice of appeal is lodged in respect of the decision of an employer appealed against:
    - (i) if the appellant has indicated in his or her notice of appeal that he or she is a

member of only one association of employees—to that association of employees, or

- (ii) except as provided by subparagraph (i)—to such association of employees as the Senior Chairperson determines, and
- (b) where 2 or more notices of appeal are lodged in respect of the decision of an employer appealed against:
- (i) if each of the appellants has indicated in his or her notice of appeal that he or she is a member of the one association of employees and none of them is a member of any other such association—to that one association of employees, or
  - (ii) except as provided by subparagraph (i)—to such association of employees as the Senior Chairperson determines.

#### **16 Provisions relating to the nomination of employers' representatives and employees' representatives**

Schedule 2 has effect with respect to the nomination of employers' representatives and employees' representatives.

#### **17 Sittings of the Tribunal**

Where one or more Chairpersons have been appointed, more than one sitting of the Tribunal may be held at the same time.

#### **18 Registrar and other staff of the Tribunal**

A Registrar of the Tribunal and such other persons as may be required for the proper administration of this Act shall be appointed under and subject to the [Public Service Act 1979](#).

### **Part 3 Appeals to the Tribunal**

#### **Division 1 Promotions appeals**

##### **19 Publication of notices**

- (1) An employer, having made a decision to appoint or recommend the appointment of a person to fill a vacant office or position in the establishment of the employer, shall:
  - (a) in the case of an employer who is a Department Head within the meaning of section 3 (1) of the [Public Sector Management Act 1988](#), if the person appointed or whose appointment is recommended is an officer within the meaning of that subsection, or
  - (b) in the case of any other employer, if the person appointed or whose appointment

is recommended is an employee of the employer,

cause particulars of the decision to appoint or recommend the appointment of the person to be published, not later than 14 days after the acceptance by the person of the appointment, in a notice and cause the notice to be distributed to the employees of the employer.

(2) When a person has accepted an appointment, the employer shall cause notice in writing of:

(a) the fact of that person's acceptance,

(b) the fact of publication of any notice given under subsection (1), and

(c) the date of any notice referred to in paragraph (b),

to be given, not later than 14 days after that acceptance, to every other person who applied unsuccessfully for the appointment (other than a person who withdrew his or her application).

(3) 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 shall be deemed to be a notice under subsection (1) if given within the time limited by that subsection.

(4) A notice under subsection (1) (other than a notice to which subsection (3) or (5) applies) shall, where a form is prescribed, be in or to the effect of the prescribed form.

(5) The Senior Chairperson may, on application by an employer, permit notification under subsection (1) to be given to the employer's employees in an approved form.

## **20 Right of appeal**

Subject to and in accordance with this Part:

(a) an employee, being an officer within the meaning of section 3 (1) of the *Public Sector Management Act 1988*, may appeal to the Tribunal against a decision of an employer, being a Department Head within the meaning of that subsection, to appoint or recommend the appointment of another such officer to fill a vacant office, and

(b) an employee, not being an officer within the meaning of section 3 (1) of the *Public Sector Management Act 1988*, may appeal to the Tribunal 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,

on the ground that the appellant is, having regard to the provisions of any Act, statutory instrument, industrial award or agreement or any advertisement published in good faith in relation to the vacant office, being an Act, statutory instrument, industrial award or agreement or advertisement which is required to be applied or taken into consideration by

the employer in respect of an appointment to the vacant office, more entitled to be appointed to the vacant office than the employee in whose favour the decision was made.

## 21 Excluded circumstances

- (1) An employee is not entitled to appeal under section 20 in respect of the decision of an employer relating to a vacant office:
  - (a) if the appointment to the vacant office is not a permanent appointment,
  - (b) if the vacant office is an office specified in Schedule 1, 2 or 3 to the *Statutory and Other Offices Remuneration Act 1975*,
  - (c) if the vacant office is in the Special Division of the Public Service,
  - (d) if the maximum salary applicable to the vacant office at the date of the decision of the employer exceeds:
    - (i) except as provided in 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—that other amount,
  - (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,
  - (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,
  - (g) unless, where an invitation to apply for appointment to the vacant office was published in a notice given by the employer to its employees or in a newspaper, the employee duly made application for appointment to the vacant office,
  - (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 20,
  - (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 term officer within the meaning of section 3 (1) of the *Public Sector Management Act 1988* or a temporary employee within the meaning of that subsection,



(ii) an employee within the meaning of section 3 of the *Teaching Service Act 1970*, or

(iii) in relation to an employee of a class referred to in paragraph (c), (d) or (e) of the definition of “employee” in section 4 (1), an employee who is employed, otherwise than permanently, in the service of his or her employer.

(2) (Repealed)

## **22 Effect of failure to notify vacancy**

Where no invitation to apply for appointment to a vacant office in the establishment of an employer is published in a notice given by the employer to its employees or in a newspaper, and:

(a) if the vacant office is not one in the Public Service—any employee employed by the employer, or

(b) if the vacant position is one in the Public Service—only employees employed in the same administrative unit (within the meaning of section 3 (1) of the *Public Sector Management Act 1988*) of which the vacant office forms part,

may, if otherwise entitled, appeal to the Tribunal against the decision of the employer to appoint or recommend the appointment of one of its employees to fill the vacant office.

## **Division 2 Disciplinary appeals**

### **23 Notice of certain decisions etc**

(1) Where, in relation to an employee, an employer makes a decision, or a decision to make a recommendation:

(a) to defer, for a period in excess of 6 months, the payment of an increment to the employee,

(b) to reduce the rank, classification, position, grade or pay of the employee,

(c) to impose a fine or forfeit pay in respect of any offence of which the employee is held to be guilty,

(d) to annul the appointment of an employee appointed on probation,

(e) 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) to dismiss the employee, or

(g) to direct or to require the employee to resign,

the employer shall, except as may be otherwise provided by an order made under subsection (3), give the employee notice, in writing, of the decision as soon as practicable after the decision is made.

- (2) Where an employer is unable to give an employee notice, under subsection (1), of a decision within 14 days after the decision is made, the employer may apply to the Senior Chairperson for an order as to the giving of the notice.
- (3) On receipt of an application under subsection (2), the Senior Chairperson may make such order as the Senior Chairperson thinks fit as to the giving of the notice or may make an order dispensing with the giving of the notice.
- (4) A notice may be given, or the giving of a notice may be dispensed with, in accordance with an order made under subsection (3).

#### **24 Right of appeal**

- (1) Notwithstanding anything contained in any other Act, an employee may, subject to and in accordance with this Part, appeal to the Tribunal against a decision of his or her employer, being a decision of a kind referred to in section 23 (1).
- (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](#).

#### **25 Alternative rights of appeal**

- (1) Nothing in section 24 derogates from or otherwise affects any right of appeal an employee may have, or other proceedings which may be instituted by the employee or on his or her behalf, under any other Act or law or any industrial award or agreement (whether enacted, existing or made before, on or after the day appointed and notified under section 2 (2)) in respect of a decision of a kind referred to in section 23 (1).
- (2) Where:
  - (a) an employee elects, in writing, to forgo a right of appeal under section 24 in respect of a decision of a kind referred to in section 23 (1), or
  - (b) an employee makes an appeal or institutes other proceedings or proceedings are instituted on the employee's behalf in respect of a decision of a kind referred to in section 23 (1) under an Act or law or an industrial award or agreement referred to in subsection (1),

the employee may not thereafter appeal to the Tribunal under section 24 in respect of that decision.

- (3) Where an employee appeals to the Tribunal under section 24 in respect of a decision

of a kind referred to in section 23 (1), the employee may not thereafter, 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).

## **26 Carrying into effect of certain decisions etc**

- (1) A decision of a kind referred to in section 23 (1) shall not be carried into effect:
  - (a) where no notice of appeal is lodged with respect to the decision within the time limited by section 29—until the expiration of that time, or
  - (b) where a notice of appeal is lodged with respect to the decision within the time limited by section 29—until the appeal is determined.
- (2) Where an order is made under section 23 (3) dispensing with the giving of a notice to an employee of a decision of a kind referred to in section 23 (1), nothing in subsection (1) operates so as to prevent the decision from having effect at any time after the order is made, unless the Tribunal otherwise orders.

## **27 Effect of decision to dismiss on payment of salary etc**

Where an employee has appealed under section 24 against a decision of his or her employer to dismiss him or her, the employee shall not, except to such extent, if any, as the Tribunal otherwise determines on the appeal, be entitled to any salary, wages or allowances in respect of any period occurring after the date of the decision.

## **Division 3 Procedures relating to the making of appeals**

### **28 Notice of appeal**

An employee may make an appeal by lodging with the Registrar a notice of appeal in the approved form.

### **29 Time for lodging appeal**

- (1) Notice of an appeal under section 20 shall be lodged:
  - (a) within 21 days after the date borne by a notice of particulars under section 19 (1), or
  - (b) within 21 days after receipt by the employee of a notice under that subsection which bears no date.
- (2) Notice of an appeal under section 24 shall be lodged within 28 days after the employee is notified of the decision against which the appeal is to be made.
- (3) Nothing in this section prevents an employee from appealing against a decision which was not notified, or particulars of which were not notified, to the employee as required

by or under this or any other Act.

### **30 Appointment of agents**

- (1) An employee may, by notice of appointment in or to the effect of the prescribed form, appoint a person to be the employee's agent for the purposes of:
  - (a) accepting service of:
    - (i) a notice referred to in section 19 (1) or (2),
    - (ii) a notification given under section 19 (5), or
    - (iii) a notice of a decision of a kind referred to in section 23 (1), and
  - (b) completing and lodging a notice of appeal and accepting service of any notice under section 47A.
- (2) A copy of a notice of appointment under subsection (1) shall:
  - (a) where the employee referred to in that subsection is employed by an employer to whom section 19 (5) applies—be given to that employer, and
  - (b) where a notice of appeal is lodged with the Registrar under section 28 by the person appointed pursuant to the notice of appointment—be given to the Registrar on the lodging of the notice of appeal.

### **31 Arrangements for hearing appeals**

- (1) On receipt of a notice of appeal lodged in accordance with this Act against the decision of an employer, the Senior Chairperson, as soon as practicable after the expiration of the period within which a notice of appeal may, under section 29, be lodged against that decision:
  - (a) shall consider whether any issue of law or procedure arises in relation to the appeal which should be dealt with prior to, or without proceeding to, a hearing of the appeal,
  - (b) may determine that:
    - (i) the Senior Chairperson, sitting alone, or
    - (ii) a Chairperson, sitting alone, selected by the Senior Chairperson,shall deal with any such issue, and
  - (c) may, generally or in any particular case or class of cases, determine the procedure to be adopted in dealing with any such issue.
- (1A) The issue shall be dealt with in accordance with the relevant determinations under

subsection (1).

(1B) The decision of the Senior Chairperson or a Chairperson with respect to the issue shall be the decision of the Tribunal, and proceedings before the Senior Chairperson or Chairperson for the purpose of enabling such a decision to be made shall be deemed to be proceedings of the Tribunal.

(1C) If, in relation to an appeal:

(a) the Senior Chairperson considers that there is no issue of law or procedure which should be dealt with prior to, or without proceeding to, a hearing of the appeal, or

(b) any such issue has been dealt with in accordance with subsection (1A),

the Senior Chairperson shall, except where it has been decided not to proceed to a hearing:

(c) determine that:

(i) the Senior Chairperson shall preside as chairperson, or

(ii) a Chairperson selected by the Senior Chairperson shall preside as chairperson, at the sitting of the Tribunal for the purpose of hearing the appeal,

(d) appoint a time, date and place for the hearing of the appeal, and

(e) notify the Registrar of the arrangements made under paragraphs (c) and (d).

(2) The Senior Chairperson may, if the Senior Chairperson thinks fit, determine that 2 or more appeals in respect of the same decision shall be heard at one sitting of the Tribunal and, where the Tribunal hears 2 or more appeals at one sitting, it may make a single composite decision with respect to all or any of those appeals.

### **32 Notification of arrangements**

(1) Where the Registrar is notified under section 31 (1C) of the arrangements made for the hearing of appeals, the Registrar shall thereupon, by notice in writing:

(a) inform each appellant, the employer against whose decision the appeals are brought and the appropriate association of employees within the meaning of section 15 of the time, date and place appointed for the hearing of the appeals,

(b) inform that employer and that association of the particulars of the appeals,

(c) request that employer:

(i) to select, in accordance with this Act, a member of the Tribunal to be the employer's representative at the sitting of the Tribunal for the purpose of hearing the appeals,

- (ii) to notify the member so selected of his or her selection and of the particulars of the appeals, and
  - (iii) to notify the Registrar of the name of the member so selected, and
- (d) request that association:
  - (i) to select, in accordance with this Act, a member of the Tribunal to be the employee's representative at the sitting of the Tribunal for the purpose of hearing the appeals,
  - (ii) to notify the member so selected of his or her selection and of the particulars of the appeals, and
  - (iii) to notify the Registrar of the name of the member so selected.
- (2) The particulars referred to in subsection (1) (b), (c) (ii) and (d) (ii) are particulars setting forth, in respect of each appeal:
  - (a) the name and address of the appellant,
  - (b) where the appeal is:
    - (i) an appeal under section 20—the vacant office in respect of which the notice of appeal is lodged, or
    - (ii) an appeal under section 24—the decision of the employer appealed against,
  - (c) a brief statement of the grounds of appeal specified in the notice of appeal lodged by each appellant, and
  - (d) such other particulars as the Senior Chairperson may direct, either generally or in a particular case or class of cases.

### **33 Selection of persons to act in place of certain members**

- (1) Where a member of the Tribunal selected, in accordance with this Act, to be the employer's representative or the employee's representative at a sitting of the Tribunal for the purpose of hearing appeals:
    - (a) has neglected or refused to take and subscribe the oath referred to in clause 8 of Schedule 2, or
    - (b) is not present at the time, on the date and at the place appointed for the hearing of the appeals,
- the Senior Chairperson or, where the sitting of the Tribunal is presided over by a Chairperson, the Chairperson, may, in accordance with subsection (2), select a person to act in place of the member.

- (2) A person selected as referred to in subsection (1) shall be:
  - (a) where the member referred to in that subsection is an employer's representative—any person, or
  - (b) where the member referred to in that subsection is an employee's representative—any employee.
- (3) A person selected as referred to in subsection (1) while acting in the place of a member shall have and may exercise the functions of the member.

## **Part 4 Hearing of appeals**

### **Division 1 Formal and informal sittings of the Tribunal**

#### **34 Nature of sittings of the Tribunal**

Subject to this or any other Act, a sitting of the Tribunal for the purpose of hearing an appeal may be formal or informal.

#### **35 Sittings relating to promotions appeals**

- (1) Except as provided by subsection (2), a sitting of the Tribunal for the purpose of hearing an appeal under section 20 shall be informal.
- (2) A sitting of the Tribunal for the purpose of hearing an appeal under section 20 shall be formal if the Senior Chairperson or presiding Chairperson, being satisfied that there is good and sufficient reason for the sitting to be formal, so determines.
- (3) A determination of the Senior Chairperson or presiding Chairperson for the purposes of subsection (2) may be made on his or her own motion or on the application of a party to the appeal.
- (4) An application referred to in subsection (3) may be made before or at any time during the hearing.

#### **36 Sittings relating to disciplinary appeals**

A sitting of the Tribunal for the purpose of hearing an appeal under section 24 shall be formal.

#### **37 Provisions relating to informal sittings**

- (1) Where a sitting of the Tribunal is informal, the proceedings before the Tribunal shall not be conducted in an adversary manner and shall, subject to this Act, be conducted in accordance with such directions as may be given by the Senior Chairperson or Chairperson presiding at the sitting.
- (2) The persons entitled to be present at an informal sitting of the Tribunal are:

- (a) an appellant whose appeal is being heard by the Tribunal,
  - (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) where the appeal is an appeal under section 20, the employee in whose favour the decision referred to in paragraph (b) has been made.
- (3) The persons entitled, pursuant to subsection (2), to be present at an informal sitting of the Tribunal are not entitled to be represented by counsel, solicitor or agent or otherwise.
- (4) A person entitled, pursuant to subsection (2), to be present at an informal sitting of the Tribunal:
- (a) being a person referred to in subsection (2) (a) or (c), may adduce, orally and in writing, to the Tribunal such matters, and address the Tribunal on such matters, as are relevant to the appeal,
  - (a1) being a person referred to in subsection (2) (b), may adduce in writing to the Tribunal such matters as are relevant to the appeal and may, at the request of the Tribunal, address the Tribunal, otherwise than in writing, on any matter,
  - (b) may produce documents or exhibits to the Tribunal, and
  - (c) may with the leave of the Tribunal, and shall, where directed to do so by the Tribunal, give evidence on oath.
- (5) A person entitled, pursuant to subsection (2), to be present at an informal sitting of the Tribunal shall not:
- (a) call or examine any witness, or
  - (b) cross-examine any other such person.
- (6) Where a sitting of the Tribunal is informal, the proceedings before the Tribunal shall not be recorded unless the Senior Chairperson or Chairperson presiding at the sitting otherwise directs.

### **38 Provisions relating to formal sittings**

- (1) Where a sitting of the Tribunal is formal, evidence in the proceedings before the Tribunal shall be given on oath and shall be subject to cross-examination.
- (2) The persons entitled to be present at a formal sitting of the Tribunal are the persons referred to in section 37 (2) (a), (b) and (c).
- (3) Where a sitting of the Tribunal is formal, the sitting shall be open to the public unless



the Tribunal, on the application of a person entitled, pursuant to subsection (2), to be present at the sitting, otherwise directs in relation to the whole or any part of the sitting.

- (4) The persons entitled, pursuant to subsection (2), to be present at a formal sitting of the Tribunal are entitled to be represented by any other person (not being counsel or a solicitor) and may, with leave granted at the discretion of the Senior Chairperson or presiding Chairperson, be represented by counsel or a solicitor.
- (5) A person entitled, pursuant to subsection (2), to be present at a formal sitting of the Tribunal may call and examine any witness.
- (6) A person proposed to be called as a witness in proceedings at a formal sitting of the Tribunal, not being a person entitled, pursuant to subsection (2), to be present at the sitting, shall, unless the Tribunal otherwise orders, be excluded from the proceedings prior to giving evidence and the Tribunal may exclude a person proposed to be called as a witness from giving evidence if he or she has been present at the sitting prior to giving evidence.
- (7) Where a sitting of the Tribunal is formal, the proceedings before the Tribunal shall be recorded.

## **Division 2 General powers of the Tribunal**

### **39 Procedure at sittings of the Tribunal**

The procedure for the conduct of business at any sitting of the Tribunal shall, subject to this Part and the regulations, be as determined by the Senior Chairperson.

### **40 Chairperson**

The Senior Chairperson, or the Chairperson selected by the Senior Chairperson, as the case may require, shall preside as chairperson at a sitting of the Tribunal.

### **41 Votes of members**

- (1) At a sitting of the Tribunal, each member of the Tribunal present shall have one vote.
- (2) At a sitting of the Tribunal, the decision on any matter arising for the determination of the Tribunal of a majority of the members of the Tribunal present and voting shall, except as provided by section 31 (1B) subsection (3), be the decision of the Tribunal.
- (3) The decision of the Senior Chairperson or a Chairperson, as the case may be, at a sitting of the Tribunal on any question of law or procedure which may arise in the hearing of an appeal before the Tribunal shall be the decision of the Tribunal.
- (4) Where a Chairperson presides at a sitting of the Tribunal, the Chairperson shall, where the Chairperson does not have a legal qualification referred to in section 13 (2), and

may, in any other case, consult with the Senior Chairperson before deciding any question of law or procedure which may arise in the hearing of an appeal before the Tribunal.

#### **42 Order of presentation of cases**

- (1) At the hearing of an appeal by the Tribunal, 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 relies.

#### **43 Evidence**

- (1) The Tribunal 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) The Tribunal shall not inform itself on, or take into consideration, any matter which has not been disclosed in evidence at a sitting of the Tribunal 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 the Tribunal from informing itself on, or taking into consideration, any matter of which it is entitled to take judicial notice.

#### **44 Discovery of documents, attendance of witnesses etc**

- (1) In relation to an appeal, the Senior Chairperson or a Chairperson, by instrument in writing:
  - (a) may require a person, being an employer or any person entitled, pursuant to section 37 (2) or 38 (2), to be present at a sitting of the Tribunal for the purpose of hearing the appeal, to produce, on or before such date as is specified in the instrument, for the inspection of any other such person so specified, any document or exhibit relevant to the appeal and which is so specified,
  - (b) may require a person referred to in paragraph (a) to do either or both of the following things, namely:
    - (i) to lodge with the Tribunal, 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 persons referred to in paragraph (a) to lodge with the Tribunal, 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 Tribunal and to give evidence, and

(e) may require any person to produce before the Tribunal 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.

#### **45 Administration of oath**

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

#### **46 Adjournment**

(1) The Tribunal 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 the Tribunal of one or two members of the Tribunal, the remaining member or members may exercise the Tribunal's powers under subsection (1).

#### **47 Withdrawal of appeals**

(1) An appellant may at any time withdraw his or her appeal against a decision of his or her employer, whether or not the Tribunal has commenced to consider the appeal.

(2) Where the consideration by the Tribunal of appeals against a decision referred to in subsection (1) has not commenced, the appellant may withdraw his or her appeal by notifying the Registrar, in writing, that he or she withdraws this appeal.

(3) Where the consideration by the Tribunal of appeals against a decision referred to in subsection (1) has commenced, the appellant may withdraw his or her appeal by informing the Tribunal that he or she withdraws his or her appeal.

#### **47A Termination of listing**

(1) If an appeal has been pending for more than 6 months after notice of the appeal was lodged and the Tribunal has not commenced to hear the matter, the Registrar may by notice in writing served on the appellant require the appellant to show cause before the Registrar, at a time, date and place specified in the notice, why the appeal should not be struck out.

(2) The Registrar:

- (a) upon failure of the appellant to appear in response to the notice, or
  - (b) not being satisfied that sufficient cause has been shown as required by the notice,
- may, by order signed by the Registrar, strike out the appeal and, in that event, shall in due course so notify the parties to the appeal.

#### **48 Decisions with respect to appeals**

- (1) The Tribunal, in relation to an appeal under section 20, may decide to allow or disallow the appeal.
- (2) The Tribunal, in relation to an appeal under section 24, may decide to allow or disallow the appeal or make such other decision with respect to the appeal as it thinks fit.
- (3) The decision of the Tribunal in respect of an appeal shall, except as provided by Part 5, be final and shall be given effect to by the employer against whose decision the appeal was brought.
- (4) The decision of the Tribunal in respect of an appeal shall be in the form of an instrument in writing signed by the Senior Chairperson or Chairperson before whom the appeal was heard and shall include the reasons for the decision.

#### **49 Transcripts of proceedings**

- (1) Where proceedings before the Tribunal are recorded, they shall be recorded in such manner as the Senior Chairperson directs.
- (2) A record of proceedings before the Tribunal which is made by means of shorthand, stenotype machine or sound-recording apparatus shall not be transcribed unless the Senior Chairperson or a Chairperson so determines or the transcription is required by law.
- (3) Except as provided by subsection (4), a transcription made under subsection (2) shall be supplied only to a member of the Tribunal approved by the Senior Chairperson or by a Chairperson or for the purposes of an appeal against a decision of the Tribunal.
- (4) A copy of a record of proceedings before the Tribunal or a transcription made under subsection (2) in respect of proceedings at a formal sitting of the Tribunal may, at the discretion of the Senior Chairperson presiding at the proceedings or sitting or the Chairperson so presiding, be supplied to any person in accordance with such terms and conditions as the Minister may, from time to time, determine.
- (5) Where, within 6 months after an appeal is determined, no transcription of the proceedings before the Tribunal on that appeal has been made under subsection (2), the record of those proceedings may be destroyed.

## **50 Application of the *Defamation Act 1974***

For the purposes of section 18 of the *Defamation Act 1974*, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

## **51 Offences relating to secrecy of information**

A person appearing before the Tribunal on the hearing of an appeal 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 to the Tribunal which is relevant to the appeal.

## **52 Authentication of documents**

Every document requiring authentication by the Tribunal may be sufficiently authenticated if signed by the Senior Chairperson or a Chairperson.

## **53 Judicial notice of certain signatures**

Judicial notice shall be taken of the signature of the Senior Chairperson, a Chairperson or the Registrar when appearing on a document issued by the Tribunal.

## **Part 5 Appeals from the Tribunal**

### **54 Appeal to Supreme Court on point of law**

A person being:

- (a) an employer against whose decision an appeal is brought,
- (b) an appellant with respect to that decision, or
- (c) where the appeal is an appeal under section 20, the employee in whose favour that decision is made,

may, subject to this Part, appeal to the Supreme Court against any decision of the Tribunal on a question of law.

### **55 Time for making appeal etc**

- (1) An appeal under section 54 shall be made within 21 days after the date of the Tribunal's decision on the question of law the subject of the appeal and shall be made in accordance with the rules of the Supreme Court.
- (2) An appellant under section 54 shall, within the period of 21 days referred to in subsection (1), serve a copy of the process originating the appeal on the Tribunal and each other person referred to in section 54.

## **56 Determination of question of law**

- (1) The Supreme Court shall hear and determine the question of law arising on an appeal under section 54 and shall:
  - (a) remit the decision of the Court thereon to the Tribunal, or
  - (b) make such order in relation to the appeal as to it seems fit.
- (2) The Tribunal or a member of the Tribunal shall not be liable to any costs in respect of the decision of the appeal.

## **Part 6 Miscellaneous**

### **57 Service of notices**

- (1) Any notice or notification which, by or under this Act, is required or authorised to be given to any person may be given:
  - (a) in the case of an employee—by delivering it personally to the employee or, where the employee has, under section 30 (1), appointed an agent, to the employee's agent or by sending it by pre-paid post addressed to the employee at the employee's place of employment or place of residence or, where the employee has, under section 30 (1), appointed an agent, to the address specified in the notice of appointment for the giving of notices under this Act,
  - (b) in the case of an employer not being a statutory body—by delivering it to him or her personally or by sending it by pre-paid post addressed to the employer at the employer's place of business,
  - (c) in the case of an employer being a statutory body:
    - (i) by leaving it at the principal office of the statutory body with a person apparently in the service of the statutory body and apparently not less than 16 years of age, or
    - (ii) by delivering it, or by sending it by pre-paid post, addressed to the statutory body at the address, if any, specified by the statutory body for the giving of notices under this Act, or, where no such address is specified, at the principal office of the statutory body, or
  - (d) in the case of the Tribunal—by delivering it to the Registrar or by sending it by pre-paid post to the Tribunal addressed to the Registrar at the office of the Tribunal.
- (2) Notice or notification shall, in respect of a notice or notification sent by pre-paid post in accordance with subsection (1) (a), (b) or (c) (ii), be deemed to have been given at the time at which the notice or notification would be delivered in the ordinary course

of post.

## **58 Repeals**

Each Act specified in Column 1 of Schedule 5 is, to the extent specified opposite that Act in Column 2 of Schedule 5, repealed.

## **59 Savings, transitional and other provisions**

Schedule 6 has effect.

## **60 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) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

## **Schedule 1 Provisions relating to the offices of Senior Chairperson, Acting Senior Chairperson and Chairperson**

(Section 12)

### **1 Application of [Public Sector Management Act 1988](#)**

The [Public Sector Management Act 1988](#) (other than Part 8) does not apply to or in respect of the appointment of the Senior Chairperson, the Acting Senior Chairperson or a Chairperson and a person so appointed is not, in the person's capacity as the Senior Chairperson, the Acting Senior Chairperson or a Chairperson, subject to that Act while the person holds office as the Senior Chairperson, the Acting Senior Chairperson or a Chairperson.

### **1A Application of Schedule to Senior Chairperson and Acting Senior Chairperson**

The following clauses of this Schedule apply, unless otherwise specified, to the Senior Chairperson and Acting Senior Chairperson in the same way as they apply to a Chairperson and, accordingly, references in those clauses to a Chairperson include a reference to the Senior Chairperson and Acting Senior Chairperson.

## **2 Appointment of holder of judicial office**

- (1) The appointment of a holder of a judicial office as a Chairperson shall not, nor shall service as a Chairperson, affect his or her tenure of that office or his or her rank, title, status, precedence, salary or other rights or privileges as a holder of that office.
- (2) A holder of a judicial office may, notwithstanding that the holder is a Chairperson, exercise his or her functions as a holder of that office, but while he or she is a Chairperson he or she shall not (unless otherwise provided by the instrument of appointment as a Chairperson) be required to exercise any functions as a holder of that office.
- (3) The service, as Chairperson, of a holder of a judicial office shall, for all purposes, be taken to be service as a holder of that judicial office.

## **3 Taking of certain oaths**

- (1) A person appointed as a Chairperson who was not, at the time of appointment, the holder of a judicial office shall, on being appointed, take the oath of allegiance and the judicial oath as prescribed in the [Oaths Act 1900](#).
- (2) Sections 11, 11A and 12 of the [Oaths Act 1900](#) apply to and in respect of an oath required to be taken under subclause (1) of this clause as if the oath were required to be taken under Part 2 of that Act.

## **4 Full-time and part-time appointments**

A Chairperson may be appointed on a full-time basis or a part-time basis, except for a Senior Chairperson who is not a holder of judicial office who must be appointed on a full-time basis.

## **5 Full-time appointee may serve on part-time basis**

- (1) The Governor may, at the request of a person appointed on a full-time basis, determine that the person may work on a part-time basis for a specified period or periods.
- (2) A person appointed on a full-time basis who was not, at the time of appointment, the holder of a judicial office must devote the whole of his or her time to the duties of the office to which he or she is appointed, except during any period referred to in subclause (1).
- (3) Despite subclause (2), a person may:
  - (a) hold, and exercise the functions of, a judicial office or another statutory or other public office, or
  - (b) engage in any other employment,



with the consent of the Minister.

## **6 Remuneration**

- (1) A Chairperson (not including an Acting Senior Chairperson) is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Chairperson.
- (2) A Chairperson who is the holder of a judicial office is not, while receiving remuneration as such an officer, entitled to remuneration under this Act.

## **7 Removal of holder of judicial office**

The Governor may remove a Chairperson, being the holder of a judicial office, from office upon the address of both Houses of Parliament, but not otherwise.

## **8 Removal from office of Chairperson not being holder of judicial office**

The Governor may remove a Chairperson, not being the holder of a judicial office, from office for inability, misbehaviour or failure to comply with the terms and conditions of appointment (including a term or condition modified by a determination under clause 5 (1) or a term or condition of a consent granted under clause 5 (3)).

## **9 Vacation of office by Chairpersons not being holders of judicial office**

A person appointed as a Chairperson, not being the holder of a judicial office, shall be deemed to have vacated office:

- (a) if the person dies,
- (b) if the person (not being a person who is appointed on a part-time basis or who is working on a part-time basis) engages (whether in New South Wales or elsewhere) during the term of office in any paid employment outside the duties of the office,
- (c) if the person becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (c1) if the person is unavailable for duty as a Chairperson (in accordance with the terms and conditions of his or her appointment, including a term or condition modified by a determination under clause 5 (1) or a term or condition of a consent granted under clause 5 (3)) for a period of 28 consecutive days, except on leave granted, in the case of the Senior Chairperson or Acting Senior Chairperson, by the Minister, or in the case of a Chairperson, by the Senior Chairperson,

- (d) if the person becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
- (e) if the person is convicted in New South Wales of a crime or an offence punishable by imprisonment for 12 months or upwards, or if the person is convicted elsewhere than in New South Wales of a crime or an offence which if committed in New South Wales would be a crime or an offence so punishable,
- (f) if the person resigns the office by writing under his or her hand addressed to the Governor, or
- (g) if the person is removed from office by the Governor under clause 8.
- (h) (Repealed)

#### **9A Leave**

- (1) The entitlement of a Chairperson to annual or other leave is to be as stated in the instrument of the person's appointment.
- (2) A Chairperson may be granted leave:
  - (a) in the case of the Senior Chairperson or Acting Senior Chairperson—by the Minister, and
  - (b) in the case of a Chairperson—by the Senior Chairperson.
- (3) A Chairperson holding office at the date of assent to the *Police Service Amendment (Promotions and Integrity) Act 2001* is taken to have the leave entitlements of an officer within the meaning of the *Public Sector Management Act 1988*.

#### **10 Preservation of rights of Chairpersons previously public servants etc**

- (1) In this clause:

**statutory body** means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

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

- (2) Subject to subclause (3) of this clause and to the terms of the appointment, where a person appointed as a Chairperson, not being the holder of a judicial office, was, immediately before the appointment:
  - (a) an officer of the Public Service,

- (b) a contributor to a superannuation scheme,
- (c) an officer employed by a statutory body, or
- (d) a person in respect of whom provision was made by any Act that the person retain any rights accrued or accruing to the person as an officer or employee,

the person:

- (e) shall retain any rights accrued or accruing to the person as such an officer, contributor or person,
- (f) may continue to contribute to any superannuation scheme to which the person was a contributor immediately before his or her appointment as a Chairperson, and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the person had continued to be such an officer, contributor or person during his or her service as a Chairperson, and

- (h) the person's service as a Chairperson shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which the person continued to contribute or by which that entitlement is conferred, and
- (i) the person shall be deemed to be an officer or employee, and the Tribunal shall be deemed to be the person's employer, for the purposes of the superannuation scheme to which the person is entitled to contribute under this clause.

(3) If a Chairperson would, but for this subclause, be entitled under subclause (2) of this clause to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme, he or she shall not be so entitled upon becoming (whether upon appointment as a Chairperson or at any later time while he or she holds office as a Chairperson) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) of this clause cease to apply to or in respect of him or her and the Tribunal in any case where he or she becomes a contributor to such another superannuation scheme.

(4) Subclause (3) of this clause does not prevent the payment to a Chairperson upon 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, by reason of resignation, to be an officer or employee for the purposes of that scheme.

(5) A Chairperson shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

## **11 Re-appointment to former employment in certain cases**

(1) In this clause:

**retiring age** means:

- (a) in relation to a person who was, immediately before being appointed as a Chairperson, an officer of the Public Service—the age of 60 years, and
- (b) in relation to a person who was, immediately before being appointed as a Chairperson, an officer or employee of a statutory body—the age at which officers or employees (being officers or employees of the class to which that person belonged immediately before being appointed as a Chairperson), as the case may be, of that statutory body are entitled to retire.

**statutory body** means any body declared under clause 12 to be a statutory body for the purposes of this Schedule.

(2) A person, not being the holder of a judicial office, who ceases to be a Chairperson, otherwise than pursuant to clause 9 (paragraph (f) excepted), shall, if the person has not attained the retiring age, be entitled to be appointed, where, immediately before being appointed as a Chairperson, the person was:

- (a) an officer of the Public Service—to some office in the Public Service, or
- (b) an officer or employee of a statutory body—to some office in the service of that body,

not lower in classification and salary than that which the person held immediately before being appointed as a Chairperson.

## **12 Declarations of statutory bodies**

The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.

## **Schedule 2 Provisions relating to the nomination of employers' representatives and employees' representatives**

(Section 16)

### **1 Direction relating to nominations**

(1) The Registrar, at the direction of the Senior Chairperson, shall, at all such times as may be necessary for the due administration of this Act, by notice in writing to an employer or an association of employees, direct the employer or association, as the case may be, to nominate, on or before such date as is specified in the notice, a panel of not less than 2 and not more than 40 persons, in order of preference, to be members of the Tribunal.

- (2) The order of preference referred to in subclause (1) of this clause may, where the staff establishment of an employer or the membership of an association of employees is divided into different classes or groups, be nominated in relation to appeals made by members of those classes or groups.

## **2 Form of nomination**

- (1) A nomination pursuant to a direction under clause 1 shall be:
- (a) in the approved form, and
  - (b) accompanied by:
    - (i) the consent, in writing, to his or her nomination of each person nominated, and
    - (ii) the oath referred to in clause 8 sworn by each person nominated.
- (2) A nomination pursuant to a direction under clause 1 shall be made by lodging the document required pursuant to subclause (1) of this clause with the Registrar.

## **3 (Repealed)**

## **4 Representatives of Director-General of Education**

A person nominated by the Director-General of Education in accordance with this Schedule shall be:

- (a) the Director-General of Education,
- (b) an officer of the Education Teaching Service within the meaning of section 4 (1) of the *Education Commission Act 1980*, or
- (c) an officer within the meaning of section 3 (1) of the *Public Sector Management Act 1988*, employed in the Department of Education.

## **4A Representatives of Director-General of Technical and Further Education**

A person nominated by the Director-General of Technical and Further Education in accordance with this Schedule shall be:

- (a) the Director-General of Technical and Further Education,
- (b) an officer of the Technical and Further Education Teaching Service within the meaning of section 4 (1) of the *Education Commission Act 1980*, or
- (c) an officer within the meaning of section 3 (1) of the *Public Sector Management Act 1988*, employed in the Department of Technical and Further Education.

## **5 Representatives of employing authorities**

A person nominated by an employing authority in accordance with this Schedule shall be:

- (a) an employee, or
- (b) where the employing authority is:
  - (i) a corporate body—a member of the corporate body,
  - (ii) a corporation sole—the person constituting the corporation sole, or
  - (iii) an individual—that individual.

## **6 Representatives of associations of employees**

A person nominated by an association of employees in accordance with this Schedule shall be an employee.

### **6A Retired persons**

- (1) For the purposes of clauses 3-6, in so far as those provisions designate, by reference to an office or position of employment, the necessary qualification for nomination of a person as a representative, a person who, although retired, held such an office or position immediately before retirement shall be deemed to be suitably qualified.
- (2) For the purposes of clause 11 (1), in comparing the qualifications of a person who vacates office with those of a person who may be nominated to replace that person, no distinction shall be drawn between the holder of an office or position and a person who held such an office or position immediately before retirement.

## **7 Term of office**

A person nominated in accordance with this Schedule as an employer's representative or an employee's representative shall, subject to this Act, hold office as a member of the Tribunal for a term of 3 years from the date specified in the notice given by the Registrar under clause 1 in pursuance of which the person's nomination was made and shall, if otherwise qualified, be eligible for renomination as an employer's representative or an employee's representative, as the case may be.

## **8 Oath**

- (1) A person nominated in accordance with this Schedule as an employer's representative or an employee's representative shall not act as a member of the Tribunal unless he or she has taken an oath in the prescribed form.
- (2) Sections 11, 11A and 12 of the *Oaths Act 1900* apply to and in respect of an oath required to be taken under subclause (1) of this clause as if the oath were an oath required to be taken under Part 2 of that Act.

## **9 Removal from office**

The Governor may remove a member of the Tribunal, being an employer's representative

or an employee's representative, from office if, without proper cause or excuse, he or she neglects or refuses to sit as a member of the Tribunal at any sitting at which he or she is required, by notice given under section 32 (1), to attend as an employer's representative or an employee's representative, as the case may be.

#### **10 Vacation of office**

A member of the Tribunal, being an employer's representative or an employee's representative, shall be deemed to have vacated his or her office if:

- (a) he or she dies,
- (b) he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- (c) he or she becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the *Mental Health Act 1958* or a person under detention under Part 7 of that Act,
- (d) he or she is convicted in New South Wales of a crime or an offence punishable by imprisonment for 12 months or upwards, or if he or she is convicted elsewhere than in New South Wales of a crime or an offence which if committed in New South Wales would be a crime or an offence so punishable,
- (e) he or she resigns his or her office by writing under his or her hand addressed to the Registrar,
- (f) he or she is removed from office by the Governor,
- (g) he or she ceases to hold the qualification by virtue of which he or she was nominated as an employer's representative or an employee's representative, as the case may be.

#### **11 Filling of casual vacancy**

- (1) On the occurrence of a vacancy in the office of a member of the Tribunal, being an employer's representative or an employee's representative, the employer or association of employees who nominated the member may, within one month after the occurrence of the vacancy, nominate, in the same manner, a person having the same qualifications as the member whose office has become vacant was nominated and qualified.
- (2) A person nominated under subclause (1) of this clause shall, subject to this Act, hold office as a member of the Tribunal for the balance of his or her predecessor's term of office.

## 12 Failure to make nomination

- (1) Where, for the purposes of this Act, no nomination or no proper nomination is made by an employer of a person to be a member of the Tribunal:
- (a) on or before the date specified in a notice given by the Registrar under clause 1 to the employer, or
  - (b) within one month after the occurrence of a vacancy in the office of a member nominated by the employer,

the Governor may appoint a person to be a member of the Tribunal, being a person qualified to be nominated by the employer to be a member of the Tribunal.

- (2) Where, for the purposes of this Act, no nomination or no proper nomination is made by an association of employees of a person to be a member of the Tribunal:
- (a) on or before the date specified in a notice given by the Registrar under clause 1 to the association of employees, or
  - (b) within one month after the occurrence of a vacancy in the office of a member nominated by the association of employees,

the Governor may appoint a person to be a member of the Tribunal, being a person qualified to be nominated by the association of employees to be a member of the Tribunal.

- (3) A person appointed as a member of the Tribunal:
- (a) under subclause (1) of this clause—shall be deemed to have been nominated in accordance with this Act by the employer in respect of whose neglect or default he or she was so appointed, or
  - (b) under subclause (2) of this clause—shall be deemed to have been nominated in accordance with this Act by the association of employees in respect of whose neglect or default he or she was so appointed.

## Schedule 3 Associations of employees

(Section 4 (1), defn of "association of employees", (6), (7))

Association of Railway Professional Officers of Australia.  
Australasian Society of Engineers.  
Australian Institute of Marine and Power Engineers.  
Australian Railways Union.  
Australian Theatrical and Amusement Employees' Association.  
Australian Timber Workers' Union.  
Australian Workers' Union.  
Building Workers' Industrial Union of Australia.  
Dental Technicians' Association of New South Wales.



Electricity Supply Professional Officers' Association.  
Federated Clerks' Union of Australia.  
Federated Engine Drivers and Fireman's Association of Australasia.  
Federated Ironworkers' Association of Australia.  
Federated Liquor and Allied Industries Employees Union of Australia.  
Federated Mining Mechanics' Association of Australasia.  
Federated Municipal and Shire Council Employees' Union of Australia.  
Federated Rubber and Allied Workers Union of Australia.  
Federated Ship Painters and Dockers' Union of Australia.  
Federated Storemen and Packers' Union of Australia.  
Firemen and Deckhands' Union of New South Wales.  
Furnishing Trades Society of New South Wales.  
National Union of Railwaymen of Australia.  
New South Wales Fire Brigade Employees' Union.  
New South Wales Journalists' Union.  
New South Wales Nurses' Association.  
New South Wales Public Medical Officers Association.  
New South Wales Public Service Professional Officers Association.  
New South Wales Real Estate Salesmen's Association.  
New South Wales Teachers Federation.  
Operative Plasterers and Plaster Workers' Federation of Australia.  
Operative Painters and Decorators' Union of Australia.  
Operative Stonemasons Society of Australia.  
Plumbers and Gasfitters Employees' Union of Australia.  
Police Association of New South Wales.  
Printing and Kindred Industries Union.  
Public Service Association of New South Wales.  
Seamen's Union of Australia.  
The Amalgamated Metal Workers' and Shipwrights' Union.  
The Amalgamated Society of Carpenters and Joiners of Australia.  
The Association of Architects, Engineers, Surveyors and Draughtsmen of Australia.  
The Association of Professional Engineers, Australia.  
The Australasian Coal and Shale Employees Federation.  
The Australasian Meat Industry Employees Union.  
The Australasian Transport Officers Federation.  
The Australian Journalists' Association.  
The Boot Trades Employees Federation.  
The Clothing and Allied Trades Union of Australia.  
The Commissioned Police Officers' Association of New South Wales.  
The Electrical Trades Union of Australia.  
The Federated Brick, Tile and Pottery Industrial Union of Australia.  
The Federated Miscellaneous Workers' Union.  
The Federated Moulders' (Metal) Union of Australia.  
The Health and Research Employees Association of Australia.  
The Hunter District Water Board Employees' Association.  
The Institute of Inspectors of Schools of New South Wales.  
The M.S.B. Officers' Association.  
The Merchant Service Guild of Australia.

The Professional Officers Association of New South Wales.  
 Transport Workers' Union of Australia.  
 Vehicle Builders Employees' Federation of Australia.  
 Water and Sewerage Employees' Union.  
 Water Industry Salaried Officers' Union.

## Schedule 4 Employing authorities

(Section 4 (1), defn of "employing authority", (8), (9))

Board of Fire Commissioners of New South Wales.  
 Board of Tick Control.  
 FSS Trustee Corporation.  
 Forestry Commission in respect of all casual and general employees on forest work engaged under section 10 (1) of the [Forestry Act 1916](#).  
 Grain Handling Authority of New South Wales.  
 Greyhound Racing Authority (NSW).  
 Health Commission of New South Wales in respect of persons appointed and employed under section 14A of the [Health Commission Act 1972](#).  
 Metropolitan Waste Disposal Authority.  
 New South Wales Film Corporation.  
 Pacific Power.  
 Pastures protection boards.  
 Roads and Traffic Authority.  
 SAS Trustee Corporation.  
 Sydney Farm Produce Market Authority.  
 TAFE Commission.  
 Trotting Authority of New South Wales.  
 Water Administration Ministerial Corporation.  
 Waterways Authority.  
 Zoological Parks Board of New South Wales.

## Schedule 5 Repeals

(Section 58)

Year and number of Act	Short title of Act	Extent of repeal
1902 No 31	Public Service (Promotion Appeals) Act 1902	The unrepealed portion.
1944 No 15	<a href="#">Crown Employees Appeal Board Act 1944</a>	The whole Act.
1952 No 38	<a href="#">Crown Employees Appeal Board (Amendment) Act 1952</a>	The whole Act.
1954 No 36	<a href="#">Grain Elevators Act 1954</a>	Section 28.
1957 No 55	<a href="#">Crown Employees Appeal Board (Amendment) Act 1957</a>	The whole Act.
1960 No 16	<a href="#">Crown Employees Appeal Board (Amendment) Act 1960</a>	The whole Act.

1963 No 59	<a href="#">State Planning Authority Act 1963</a>	Section 9.
1964 No 10	<a href="#">Crown Employees Appeal Board (Amendment) Act 1964</a>	The unrepealed portion.
1964 No 57	<a href="#">Crown Employees Appeal Board (Further Amendment) Act 1964</a>	The whole Act.
1968 No 11	<a href="#">Sydney Farm Produce Market Authority Act 1968</a>	Section 8.
1968 No 56	<a href="#">Sydney Cove Redevelopment Authority Act 1968</a>	Section 9.
1970 No 29	<a href="#">Dairy Industry Authority Act 1970</a>	Section 13 (2) and (3) and so much of Part 2 of the First Schedule as relates to Act No 15, 1944.
1970 No 40	<a href="#">Crown Employees Appeal Board (Amendment) Act 1970</a>	The whole Act.
1970 No 97	<a href="#">Waste Disposal Act 1970</a>	Section 14.
1971 No 43	<a href="#">Crown Employees Appeal Board (Amendment) Act 1971</a>	The whole Act.
1974 No 86	<a href="#">Public Service and Crown Employees Appeal Board (Amendment) Act 1974</a>	The unrepealed portion.
1975 No 39	<a href="#">Public Service and Crown Employees Appeal Board (Amendment) Act 1975</a>	The whole Act.
1975 No 54	<a href="#">Crown Employees Appeal Board (Amendment) Act 1975</a>	The whole Act.
1976 No 34	<a href="#">Water Resources Commission Act 1976</a>	So much of Schedule 6 as relates to Act No 15, 1944.
1976 No 63	<a href="#">Statute Law Revision Act 1976</a>	So much of Schedule 1 as relates to Act No 10, 1964.
1976 No 72	<a href="#">Ambulance Services Act 1976</a>	So much of Schedule 2 as relates to Act No 15, 1944, and clause 17 of Schedule 3.
1977 No 55	<a href="#">New South Wales Film Corporation Act 1977</a>	So much of Schedule 5 as relates to Act No 15, 1944.
1979 No 90	<a href="#">Public Service (Promotion Appeals) Amendment Act 1979</a>	The whole Act.
1979 No 93	<a href="#">Crown Employees Appeal Board (Public Service) Amendment Act 1979</a>	The whole Act.

## Schedule 6 Savings, transitional and other provisions

(Section 59)

### 1 Definitions

In this Schedule:

**appointed day** means the day appointed and notified under section 2 (2).

**cognate Acts** means the *Industrial Arbitration (Appeal Tribunal) Amendment Act 1980*, the *Judges' Pensions (Appeal Tribunal) Amendment Act 1980*, the *Teaching Service (Appeal Tribunal) Amendment Act 1980*, the *Supreme Court (Appeal Tribunal) Amendment Act 1980*, the *Statutory and Other Offices Remuneration (Appeal Tribunal) Amendment Act 1980*, and the *Public Service (Appeal Tribunal) Amendment Act 1980*.

**former appellate body** means the Crown Employees Appeal Board or a Promotions Appeal Tribunal constituted under section 69H of the *Public Service (Promotion Appeals) Act 1902*.

### 2 Appeals against decisions made before the appointed day

- (1) An appeal against any decision of an employer, being a decision made before the appointed day, may be made to, or continued and completed before, a former appellate body and shall be given effect to, in all respects as if this Act and the cognate Acts had not been enacted, and not otherwise.
- (2) For any purpose of or incidental to subclause (1) of this clause, the provisions of the Acts repealed by this Act, the provisions of the Acts amended by the cognate Acts and the provisions of any instrument made under those Acts and in force immediately before the appointed day shall, notwithstanding any other provision of this Act or any provision of the cognate Acts, continue in force.
- (3) (Repealed)
- (4) A person who is concerned in the hearing and determination of an appeal to which this clause applies shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and an Act the provisions of which are continued in force by subclause (2) of this clause.

### 3 Construction of certain references

- (1) On and from the appointed day, a reference in a provision of any other Act or of any regulation, by-law or other statutory instrument or of any other document, whether of the same or of a different kind (not being a prescribed provision), to:
  - (a) a former appellate body shall be read and construed as a reference to the Tribunal, and

(b) the Chairman of the Crown Employees Appeal Board shall be read and construed as a reference to the Senior Chairperson of the Tribunal.

(2) For the purposes of subclause (1) of this clause, the following provisions are prescribed provisions:

(a) clause 2,

(b) section 8 (1) (c) of the *Judges' Pensions Act 1953*,

(c) section 4 (2) of the *Police Regulation (Priority Lists and Appeals) Amendment Act 1978*, and

(d) section 5 of the *Police Regulation (Appeals) Appeal Tribunal (Amendment) Act 1980*.

#### **4 Certain right of re-appointment to Public Service**

Section 69D of the *Public Service (Promotion Appeals) Act 1902* shall, notwithstanding the repeal of that Act, continue to apply after the date of repeal of that Act in favour of a person in respect of whom the section applied immediately before that date.