

Transport Appeal Boards Act 1980 No 104

[1980-104]



New South Wales

Status Information

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Provisions in force

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

Notes—

- **See also**
[Industrial Relations Amendment \(Industrial Court\) Bill 2013](#)

Authorisation

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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 Transit Authority and other authorities.

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 Application of Act

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

4 Definitions

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

appeal means a promotion appeal or a disciplinary appeal to a Board.

Authority means Rail Corporation New South Wales or the State Transit Authority.

Board means a Transport Appeal Board constituted under this Act.

Commission means the Industrial Relations Commission of New South Wales.

disciplinary appeal means a disciplinary appeal within the meaning of the *Transport Administration (Staff) Regulation 2005*.

functions includes powers, authorities and duties.

officer includes employee.

President means the President of the Commission.

promotion appeal means a promotion appeal within the meaning of the *Transport Administration (Staff) Regulation 2005*.

regulation means a regulation under this Act.

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

- (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- (3) (Repealed)
- (4) Notes included in this Act do not form part of this Act.

Part 2 Transport Appeal Boards

5 Constitution of Boards

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

6 Functions of Boards

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

7-10 (Repealed)

11 Sittings of Boards

- (1) A Board is, unless it determines otherwise, to sit in Sydney for the hearing of appeals.
- (2) Subject to this or any other Act, the proceedings before a Board for the purpose of hearing an appeal are to be treated as if they were proceedings before the Commission under Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

Note—

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

11A Persons entitled to be present at proceedings

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

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

11B-12 (Repealed)

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 or the member of the 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, 19 (Repealed)

20 Costs

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

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) (Repealed)

22 Lapsing of appeal

An appeal lapses if:

- (a) the appellant withdraws the appeal by notifying the secretary in writing or, if a Board has commenced to consider the appeal, by informing the Board, or
- (b) in the case of a promotion appeal:
 - (i) the position concerned no longer exists, or

- (ii) the appointment against which the appeal is made lapses for any reason.

23 Decisions on appeals

- (1) A Board may, in relation to an appeal, decide to allow or disallow the appeal or make such other decision with respect to the appeal as it thinks fit.
- (2) Except as provided by section 23A, the decision of a Board in respect of an appeal is final and is to be given effect to by the Authority against whose decision the appeal was made.

23A Appeals on questions of law

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

24 Orders by Board with respect to payment of salary and continuity of employment

- (1) Without limiting section 23, if a Board decides to allow a disciplinary appeal, the Board may:
 - (a) if the appellant has paid a fine imposed by the Authority concerned or has had his or her pay forfeited by the Authority—order the Authority to repay the amount of any such fine or forfeited pay, and
 - (b) order the Authority to pay the appellant an amount stated in the order that does not exceed the remuneration the appellant would, but for the decision of the Authority, have received from the Authority, and
 - (c) order that any period of employment of the appellant with the Authority is taken not to have been broken by the decision of the Authority.
- (2) Any such order by a Board must be given effect to by the Authority.
- (3) Nothing in subsection (1) enables a Board to make an order for compensation in the case where a person is not reinstated or does not continue in employment.

25 (Repealed)

26 Application of [Defamation Act 2005](#) to proceedings of Board

Section 27 of the [Defamation Act 2005](#) makes provision for a defence of absolute privilege in respect of publications of defamatory matter in the course of proceedings of a Board.

Note—

Section 27 (2) (b) of the [Defamation Act 2005](#) provides that the defence of absolute privilege is available in respect of defamatory matter that is published in the course of proceedings of an Australian court or Australian tribunal, including (but not limited to) the following:

- (a) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal (including any originating process),
- (b) the publication of matter while giving evidence before the court or tribunal,
- (c) the publication of matter in any judgment, order or other determination of the court or tribunal.

The term **Australian tribunal** is defined in section 4 of that Act to mean any tribunal (other than a court) established by or under a law of an Australian jurisdiction that has the power to take evidence from witnesses before it on oath or affirmation (including a Royal Commission or other special commission of inquiry).

A Transport Appeal Board is an Australian tribunal for the purposes of the [Defamation Act 2005](#) because it is a tribunal that has the power under this Act to take evidence from witnesses under oath. See sections 11C (4) (d), 11D (1) and 19.

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 (Repealed)

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 and other things to appellant

- (1) Where an officer of an 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 an 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 President

- (1) The Minister by instrument in writing may refer to the President for investigation and report any matter relating to the promotion or discipline of officers of an Authority.
- (2) An Authority by instrument in writing may, in relation to its officers, refer to the President for investigation and report any matter relating to promotion or discipline.
- (3) The President 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), (b) (Repealed)
 - (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) (Repealed)
- (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 the Local Court.

34 Savings and transitional provisions

Schedule 2 has effect.

35 Rights of appeal to any other appeals body 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 or to the Commission 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 (Repealed)

Schedule 2 Savings and transitional provisions

(Section 34)

Part 1 Preliminary

1A Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
 - Public Sector Employment and Management Act 2002*, to the extent that it amends this Act
 - Industrial Relations Amendment (Public Sector Appeals) Act 2010*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

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.

Part 3 Provisions consequent on enactment of [Public Sector Employment and Management Act 2002](#)

5 Application of amendments

The amendments made to this Act by the [Public Sector Employment and Management Act 2002](#) do not apply in relation to appeals that have been made before the commencement of those amendments.

Part 4 Provisions consequent on enactment of [Industrial Relations Amendment \(Public Sector Appeals\) Act 2010](#)

6 Definitions

In this Part:

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

2010 Act means the [Industrial Relations Amendment \(Public Sector Appeals\) Act 2010](#).

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

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