

# TRANSPORT APPEAL BOARDS BILL, 1980

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## EXPLANATORY NOTE

### (This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Transport Authorities Bill, 1980.

The provisions of the Government Railways Act, 1912, constituting an Appeals Board are to be repealed by the proposed Government Railways (Amendment) Act, 1980, and the provisions of the Transport Act, 1930, constituting an Appeal Board are to be repealed by the proposed Transport (Amendment) Act, 1980.

The object of this Bill is to constitute Transport Appeal Boards to carry out in relation to persons who will be officers and employees of the State Rail Authority, the Urban Transit Authority and the Department of Motor Transport, the functions now being carried out by the Appeals Board under the Government Railways Act, 1912, and the Appeal Board under the Transport Act, 1930, in relation to persons who are officers and employees under those Acts.

Part I of the proposed Act contains clauses 1-4 relating to the short title, commencement, arrangement and interpretation of the proposed Act.

Part II of the proposed Act contains clauses 5-12 and deals with the constitution of, and certain procedural matters relating to, the proposed Boards. Generally, the constitution of a Board in relation to an appeal by a particular officer or employee is the same as the constitution of an appeal board in relation to an appeal by that employee under the existing legislation. A departure is that the new legislation will not require the chairman and the vice-chairman of a proposed Board to be stipendiary magistrates or barristers or solicitors of 5 years' standing.

Part III of the proposed Act contains certain provisions relating to the making of and dealing with appeals to the proposed Boards. These provisions are on the lines of the provisions dealing with appeals to the appeal boards under the existing legislation but incorporate some provisions applicable to appeals under the proposed Government and Related Employees Appeal Tribunal Act, 1980.

Part IV of the proposed Act contains, in clauses 28-30, 32 and 33, general provisions which are similar to provisions dealing with appeals to appeal boards under the existing legislation.

Clause 31 allows the reference of certain matters to the chairman or vice-chairman for investigation and report.

Clause 34 relates to savings and transitional provisions. These provisions are set out in Schedule 2. Their general effect is to continue the existing provisions relating to appeals under the Government Railways Act, 1912, and the Transport Act, 1930, so far as they relate to appeals against decisions made before the commencement of the new appeal provisions.

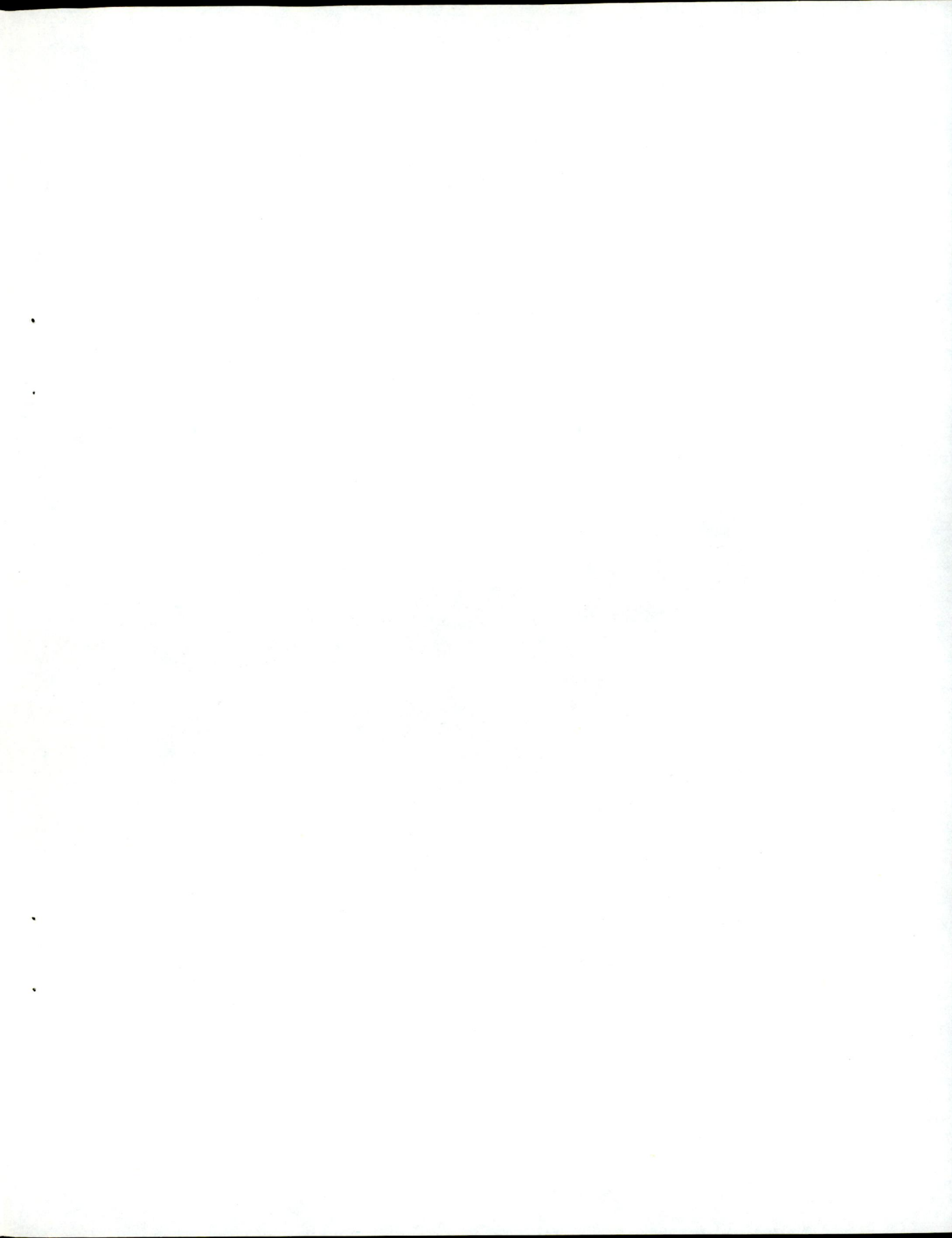
Clause 35 provides that where, in respect of a decision—

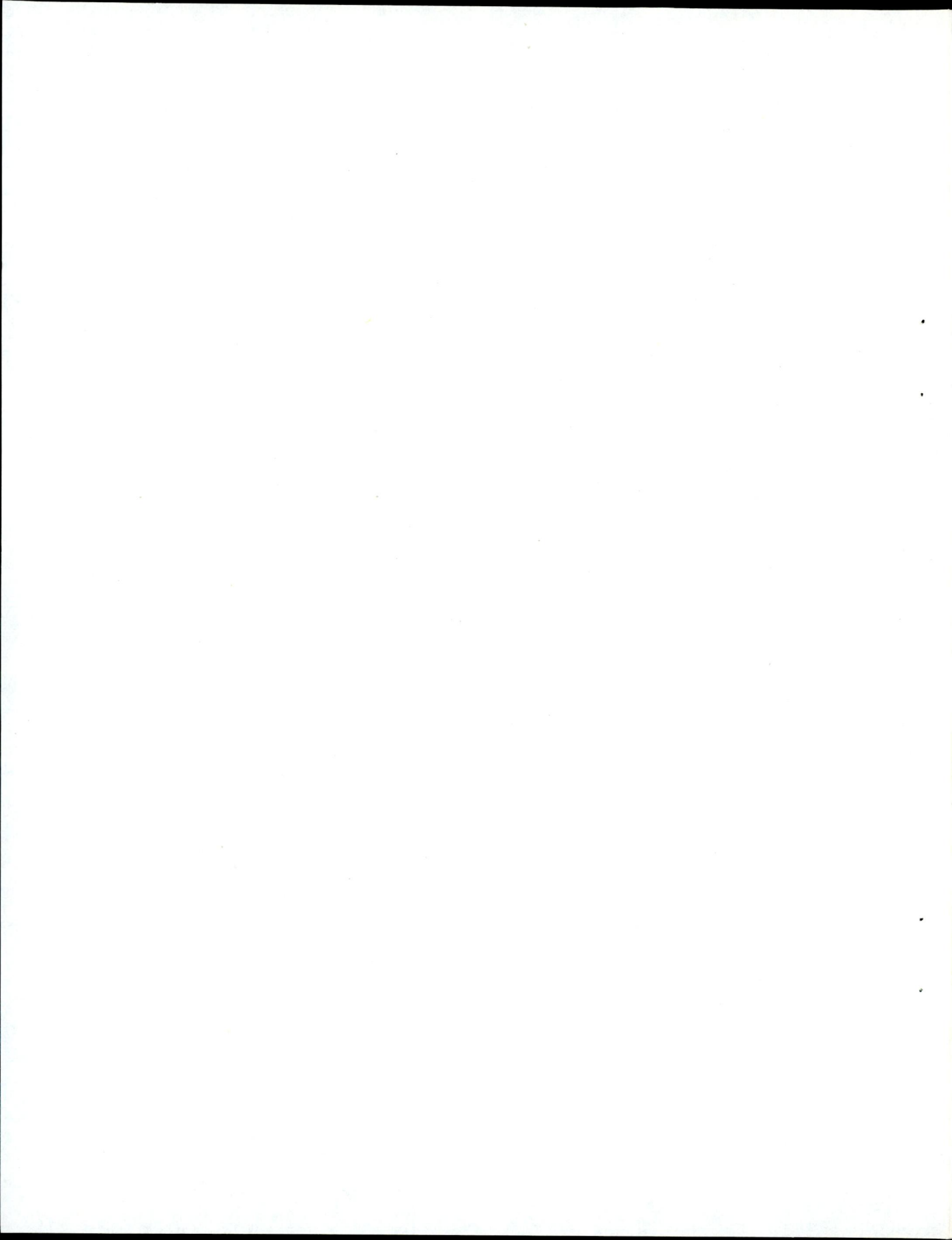
- (a) an officer has, at any time during the period commencing on the date of assent to the proposed Act and ending on the day preceding the commencement of the new appeal provisions, a right of appeal to an appeal board under the Government Railways Act, 1912, or the Transport Act, 1930; or
- (b) an officer has, at any time after the commencement of the new appeal provisions, a right of appeal to a proposed Transport Appeal Board, that officer shall not have a right of appeal to any other statutory appeal board or tribunal in respect of that decision.

Schedule 1 contains provisions relating to the membership of the proposed Transport Appeal Boards complementary to Part II of the Bill.

Schedule 2 contains the savings and transitional provisions.

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## TRANSPORT APPEAL BOARDS BILL, 1980

No. , 1980.

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### A BILL FOR

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

[MR COX—20 *March*, 1980.]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

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**PART I.**

**PRELIMINARY.**

**1.** This Act may be cited as the "Transport Appeal Boards Short title Act, 1980".

**2.** (1) This section, section 1 and section 35 shall commence **Commence-**  
10 on the date of assent to this Act. **ment.**

(2) Except as provided by subsection (1), this Act shall commence on 1st July, 1980.

**3.** This Act is divided as follows :—

**Arrange-**  
**ment.**

**PART I.—PRELIMINARY—ss. 1–4.**

15 **PART II.—TRANSPORT APPEAL BOARDS—ss. 5–12.**

**PART III.—APPEALS—ss. 13–27.**

**PART IV.—GENERAL—ss. 28–35.**

**SCHEDULE 1.—MEMBERS OF A BOARD.**

**SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.**

20 **4.** (1) In this Act, except in so far as the context or subject- **Inter-**  
matter otherwise indicates or requires— **pretation.**

"appeal" means an appeal to a Board;

"Authority" means the State Rail Authority or the Urban  
Transit Authority;

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“Board” means a Transport Appeal Board constituted under this Act;

“Chairman” means the Chairman of Transport Appeal Boards appointed under section 5 (1);

5 “functions” includes powers, authorities and duties;

“member” means a member of a Board;

“officer” includes employee;

“regulation” means a regulation under this Act;

10 “secretary” means the secretary to the Transport Appeal Boards;

“Vice-Chairman” means the Vice-Chairman of Transport Appeal Boards appointed under section 6 (1).

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that  
15 duty.

(3) In a Schedule to this Act, a reference to a subclause is, unless a contrary intention appears, a reference to a subclause of the clause in which the reference occurs.

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PART II.

20 TRANSPORT APPEAL BOARDS.

5. (1) The Governor may appoint a Chairman of Transport Appeal Boards. Constitution of Boards. cf. 1912 No. 30, s. 87 (1); 1930 No. 18, s. 114 (1).

(2) A Transport Appeal Board shall, in relation to a particular appeal, consist of—

25 (a) the Chairman;

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(b) 1 member who shall be an officer authorised in accordance with Part 1 of Schedule 1; and

(c) 1 member who shall be a nominated member within the meaning of clause 5 or 8 of Part 2 of Schedule 1.

5 6. (1) The Governor may appoint a Vice-Chairman of Transport Appeal Boards. Vice-Chairman. cf. 1912 No. 30, s. 87 (1) (a); 1930 No. 18, s. 114 (1) (a).

(2) Where the Chairman is absent from any meeting of a Board, the Vice-Chairman may exercise the functions of the Chairman and shall be deemed to be the Chairman at that meeting. s. 87 (1) (a); 1930 No. 18, s. 114 (1) (a).

7. (1) The Chairman and Vice-Chairman shall hold office for such term, not exceeding 5 years, as may be specified in their respective instruments of appointment. Term of office of Chairman and Vice-Chairman. cf. 1912 No. 30, s. 87 (1) (a); 1930 No. 18, s. 114 (1) (a).

15 (2) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of any person as Chairman or Vice-Chairman, and a person is not, in his capacity as Chairman or Vice-Chairman, subject to those provisions. s. 87 (1) (a); 1930 No. 18, s. 114 (1) (a).

20 8. A Board, the Chairman, the Vice-Chairman and the members shall have and may exercise the functions conferred upon it or them by or under this Act, the Transport Act, 1930, the Transport Authorities Act, 1980, or any other Act. Functions of Boards, the Chairman, Vice-Chairman and members.



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- 9.** At any meeting of a Board each member present shall have 1 vote and the decision of the majority of the members shall be the decision of the Board. Voting at meetings of Boards. cf. 1912 No. 30, s. 88 (1); 1930 No. 18, s. 115 (1).
- 10.** No member of a Board shall take part in the hearing of **5** an appeal against any officer in a branch of which that member is the head. Disqualification. cf. 1912 No. 30, s. 89; 1930 No. 18, s. 115A.
- 11.** A Board shall, unless the Chairman otherwise directs, sit in Sydney for the hearing of appeals. Sittings of Boards. cf. 1912 No. 30, s. 88 (2); 1930 No. 18, s. 115 (2).
- 12.** Schedule 1 has effect. Members of a Board.
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- 13.** 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. Lodgment of appeals. cf. 1912 No. 30, s. 91; 1930 No. 18, s. 115c.

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14. (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.

Time for hearing of appeals. cf. 1912 No. 30, s. 91; 1930 No. 18, s. 115c.

(2) Where—

- 5 (a) the volume of work confronting a Board is such that an appeal cannot be heard conveniently within 30 days;
- (b) owing to illness or unavailability of witnesses, the Chairman or members of a Board, the appeal cannot be heard within 30 days;
- 10 (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
- 15 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. 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 appeal.

Convening of a meeting of a Board. cf. 1912 No. 30, ss. 87 (3), 90; 1930 No. 18, ss. 114 (2), 115b.

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16. (1) At the hearing of an appeal by a Board, the employer's case shall be presented first.

Order of presentation of cases.

(2) Nothing in subsection (1) removes from an appellant or any other person the onus of proving any ground on which he  
5 relies.

17. (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.

Evidence.

(2) A Board shall not inform itself on, or take into  
10 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  
15 informing itself on, or taking into consideration, any matter of which it is entitled to take judicial notice.

18. (1) In relation to an appeal, the Chairman or the Vice-Chairman, by instrument in writing issued before or during the hearing of the appeal by a Board—

Discovery of documents, attendance of witnesses, etc.

20 (a) may require a person, being a party to the appeal or the employer of a party to the appeal, to produce, on or before such date as is specified in the instrument, for the inspection of any other party to the appeal so specified, any document or exhibit relevant to the appeal and  
25 which is so specified;

(b) may require a party to the appeal to do either or both of the following things, namely :—

(i) to lodge with the Board, on or before such  
30 date as is specified in the instrument, a written case setting out the arguments on which the person relies in relation to the appeal;

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(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);

5 (c) may require the parties to the appeal to lodge with the Board, on or before such date as is specified in the instrument, a statement of such facts or matters as are agreed upon between them in relation to the appeal;

10 (d) may require any person to appear before the Board and to give evidence; and

(e) may require any person to produce before the Board any document or exhibit relevant to the appeal.

(2) A person who fails or neglects to comply with a requirement made of him under subsection (1) is guilty of an  
15 offence against this Act and liable on conviction before a court of petty sessions constituted by a stipendiary magistrate sitting alone to a penalty not exceeding \$500.

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

20 20. An appellant before a Board shall be entitled to be represented by a barrister, solicitor or agent, who may examine witnesses and address the Board on his behalf. Representation. cf. 1912 No. 30, s. 92 (2); 1930 No. 18, s. 115E (2).

21. (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. Adjournment.

(2) In the absence from a sitting of a Board of 1 or 2 members of the Board, the remaining member or members may exercise the Board's powers under subsection (1).

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**22.** (1) An appellant may at any time withdraw his appeal, whether or not a Board has commenced to consider the appeal. Withdrawal  
of appeals.

(2) Where the consideration by a Board of an appeal has not commenced, the appellant may withdraw his appeal by 5 notifying the secretary, in writing, that he withdraws his appeal.

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

**23.** (1) A Board may confirm or modify any decision 10 appealed against or make any such order thereon as it thinks fit. Decision  
of a  
Board.

(2) Except as provided in section 24, a decision of a Board shall be final and conclusive. cf. 1912 No.  
30, ss. 92  
(3), 93 (1);  
1930 No. 18,  
ss. 115E (3),  
115F (1).

**24.** (1) Where, by its decision, a Board imposes punishment involving—

15 (a) dismissal;

(b) reduction of rank, position, grade or pay; or

(c) suspension for a period of 1 week or more,

the appellant may, within 7 days after being informed of the decision, appeal from the decision—

20 (d) where he was an officer of the State Rail Authority at the time that the matter, the subject of his appeal to the Board, arose—to that Authority;

(e) where he was an officer of the Urban Transit Authority at the time that the matter, the subject of his appeal to 25 the Board, arose—to that Authority; or

(f) where he was an officer of the Department of Motor Transport at the time that the matter, the subject of his appeal to the Board, arose—to the Commissioner for Motor Transport.

Appeal  
against a  
Board's  
decision  
in certain  
cases.  
cf. 1912 No.  
30, s. 93;  
1930 No. 18,  
s. 115F.

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(2) An Authority or the Commissioner for Motor Transport may hear, and may confirm, modify or otherwise determine an appeal made to it or him under this section.

(3) A decision of an Authority or of the Commissioner 5 for Motor Transport made under subsection (2) shall be final and conclusive.

(4) In the hearing of an appeal under this section—

- 10 (a) the Authority or the Commissioner for Motor Transport, as the case may be, may require a person giving evidence before it or him to give that evidence on oath or by way of a declaration; and
- (b) the appellant shall have the like rights and privileges as he had before the Board from which the appeal is made.

15 **25.** (1) In this section, "Commissioner" means Commissioner for Motor Transport.

Delegation by Commissioner for Motor Transport of functions under sec. 24.

(2) The Commissioner may, with the approval of the Minister, delegate to an officer of the Department of Motor Transport the exercise of the functions conferred or imposed on 20 him under section 24.

(3) The Commissioner may revoke a delegation made under this section.

(4) A delegation or a revocation of a delegation under this section shall be evidenced by an instrument in writing.

25 (5) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

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(6) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of the functions delegated, or as to time or circumstances.

(7) Notwithstanding any delegation made under this section, the Commissioner may continue to exercise the functions delegated.

(8) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force or effect as if the act or thing done had been done or suffered by the Commissioner and shall be deemed to have been done or suffered by the Commissioner.

(9) An instrument purporting to be signed by or on behalf of a delegate of the Commissioner in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commissioner under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Commissioner under this section.

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

Application of the Defamation Act, 1974.

27. 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 him at the hearing which is relevant to the appeal.

Offences relating to secrecy of information.

*Transport Appeal Boards.*

PART IV.

GENERAL.

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

Costs and expenses of Boards. cf. 1912 No. 30, s. 87 (4); 1930 No. 18, s. 114 (3).

**29.** 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.

Records of proceedings. cf. 1912 No. 30, s. 90; 1930 No. 18, s. 115B.

**30.** (1) Where an officer of the State Rail Authority, the Urban Transit Authority or the Department of Motor Transport has lodged an appeal against punishment imposed, he shall, on application, be entitled to be supplied by the Authority or the Department, as the case may be, without cost to himself with copies of all statements or reports which have been submitted to the Authority or the Department, as the case may be, in connection with the incident or incidents which formed the basis for the punishment against which he is appealing.

Supply of copies of statements, etc., to appellant. cf. 1912 No. 30, s. 91A; 1930 No. 18, s. 115D.

(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 appeal.

(3) No proceedings, civil or criminal, shall lie or be allowed against the State Rail Authority, the Urban Transit Authority or the Department of Motor Transport, 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.



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31. (1) The Minister by instrument in writing may refer to the Chairman or the Vice-Chairman for investigation and report any matter relating to the promotion or discipline of officers of the State Rail Authority, the Urban Transit Authority or the Department of Motor Transport.

Reference of certain matters to Chairman or Vice-Chairman for investigation.

(2) The State Rail Authority or the Urban Transit Authority by instrument in writing may, in relation to its officers, or the Commissioner for Motor Transport by instrument in writing may, in relation to officers of the Department of Motor Transport, refer to the Chairman or Vice-Chairman for investigation and report any matter relating to promotion or discipline.

(3) The Chairman or Vice-Chairman, as the case may be, shall carry out an investigation and submit a report in accordance with a reference made under subsection (1) or (2).

32. (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.

Regulations. cf. 1912 No. 30, s. 88 (3); 1930 No. 18, s. 263.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) the method of appealing to, and the procedure of, a Board;
- (b) subject to the Statutory and Other Offices Remuneration Act, 1975, the payment of salary, fees and allowances to the Chairman, Vice-Chairman and members;
- (c) the payment of witnesses' and other expenses;
- (d) the issue of transport passes to witnesses and appellants;
- (e) the payment of the salaries of witnesses and appellants during proceedings on an appeal; and
- (f) frivolous appeals.

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(3) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors; or

5 (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

(4) The regulations may impose a penalty not exceeding \$100 for an offence against the regulations.

10 **33.** Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate or any 2 justices of the peace. Proceedings for offences.

**34.** Schedule 2 has effect.

Savings and transitional provisions.

15 **35.** (1) Notwithstanding anything contained in any other Act, where, in respect of a decision— Rights of appeal to any other board or tribunal barred.

20 (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,

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

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

SCHEDULE 1.

5

MEMBERS OF A BOARD.

PART 1.

*Member Authorised by Employing Authority.*

10 1. Where an appeal is lodged by an officer of an Authority, the State Rail Authority, acting in consultation with the Urban Transit Authority where appropriate, shall, on being advised of the lodging of the appeal, authorise an officer of either of those Authorities (other than an officer of the branch to which the appellant belongs) to be a member of the Board hearing the appeal.

15 2. Where an appeal is lodged by an officer of the Department of Motor Transport, the Commissioner for Motor Transport, on being advised of the lodging of the appeal, shall authorise an officer of the Department (other than an officer of the branch to which the appellant belongs) to be a member of the Board hearing the appeal.

Secs. 5 (2) (b), (c), 12, cf. 1912 No. 30, s. 87 (1) (b); 1930 No. 18, s. 114 (1) (b).

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

Authorisation of an officer of the Department of Motor Transport as a member of a Board.

PART 2.

20

*Member Nominated by Industrial Union.*

20 3. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

25 “industrial union” means an industrial union of employees registered as such under the Industrial Arbitration Act, 1940, or an association of employees registered as an organization under the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as subsequently amended;

Interpretation. cf. 1912 No. 30, s. 87A (1); 1930 No. 18, s. 114A (1).

*Transport Appeal Boards.*SCHEDULE 1—*continued.*MEMBERS OF A BOARD—*continued.*PART 2—*continued.*

“prescribed time”, in relation to an appeal, means—

- 5 (a) if no time is prescribed for the purposes of paragraph (b)  
—the expiration of the period of 5 days after the day on  
which notice of the decision appealed against was given  
to the appellant; or
- 10 (b) such time as may be prescribed for the purposes of this  
paragraph,  
or such earlier time as the Chairman, at the request or with the  
consent of the appellant, determines;

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

- 15 4. (1) The secretary of an industrial union of which officers of the State Rail Authority or the Urban Transit Authority are, or are entitled or eligible to be, members—
- (a) may, by instrument in writing furnished to the secretary to the Transport Appeal Boards, nominate an officer of either of those Authorities to be a representative on a Board hearing appeals lodged by officers of the State Rail Authority or the Urban Transit Authority; and
- 20 (b) may, by instrument in writing so furnished, revoke that nomination.
- 25 (2) The secretary of an industrial union of which officers of the Department of Motor Transport are, or are entitled or eligible to be, members—
- (a) may, by instrument in writing furnished to the secretary to the Transport Appeal Boards, nominate an officer of that Department to be a representative on a Board hearing appeals lodged by officers of that Department; and
- 30 (b) may, by instrument in writing so furnished, revoke that nomination.

Nomina-  
tion of a  
member of  
a Board  
by an  
industrial  
union.  
cf. 1912  
No. 30,  
s. 87A (3);  
1930 No.  
18, s. 114A  
(3).

*Transport Appeal Boards.*SCHEDULE 1—*continued.*MEMBERS OF A BOARD—*continued.*PART 2—*continued.*

5 (1) For the purposes of section 5 (2) (c), “the nominated member”, Nominated  
 5 in relation to an appeal by an officer of an Authority, means an members.  
 officer of either Authority, being—

- (a) if only 1 representative’s nomination made under clause 4 (1) by the secretary of an industrial union of which the appellant is a member, or, if he is not a member of any industrial union, of an industrial union of which he is entitled or eligible to be a member, remains unrevoked at the prescribed time—that representative;
- 10
- (b) if 2 or more representatives’ nominations made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a), or of each of 2 or more industrial unions referred to in paragraph (a), remain unrevoked at the prescribed time—such one of those representatives—
- 15
- (i) as the appellant nominates by instrument in writing furnished to the secretary to the Transport Appeal Boards within such period after the prescribed time as the Chairman allows before the hearing of the appeal commences; or
- 20
- (ii) if the appellant does not make such a nomination within that period or any such further period or periods—as the Chairman nominates before the hearing commences; or
- 25
- (c) if—
- (i) there is no nomination made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a); or
- 30
- (ii) no nomination made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a) remains unrevoked at the prescribed time,

such officer as the Chairman nominates before the hearing commences.

35 (2) For the purposes of section 5 (2) (c), “the nominated member”, in relation to an appeal by an officer of the Department of Motor Transport, means an officer of that Department, being—

- (a) if only 1 representative’s nomination made under clause 4 (2) by the secretary of an industrial union of which the appellant is a member, or, if he is not a member of any industrial union, of
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SCHEDULE 1—*continued.*

MEMBERS OF A BOARD—*continued.*

PART 2—*continued.*

5 an industrial union of which he is entitled or eligible to be a member, remains unrevoked at the prescribed time—that representative;

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

15 (i) as the appellant nominates by instrument in writing furnished to the secretary to the Transport Appeal Boards within such period after the prescribed time as the Chairman allows before the hearing of the appeal commences; or

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

20 (c) if—

(i) there is no nomination made under clause 4 (2) by the secretary of an industrial union referred to in paragraph (a); or

25 (ii) no nomination made under clause 4 (2) by the secretary of an industrial union referred to in paragraph (a) remains unrevoked at the prescribed time,

such officer as the Chairman nominates before the hearing commences.

30 6. Without affecting clause 4 (1) (b) or (2) (b), a person's nomination as a representative under clause 4 shall, for the purposes of this Part, be deemed to be revoked—

Deemed revocation of nominations. cf. 1912 No. 30, s. 87A (4); 1930 No. 18, s. 114A (4).

(a) if he notifies the secretary to the Transport Appeal Boards, by instrument in writing, that he does not desire to continue as a representative so nominated;

35 (b) if he ceases to be an officer of the Authority or Department to which he belonged at the time of his nomination; or

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SCHEDULE 1—*continued.*

MEMBERS OF A BOARD—*continued.*

PART 2—*continued.*

5 (c) upon the expiration of the period (if any) specified in the instrument of his nomination as the period for which the nomination is to remain in force.

7. (1) A nomination may be made under clause 4 generally or for a particular appeal and, unless expressed to have been made for a particular appeal, shall be deemed to have been made generally.

Nominations may be general or particular. cf. 1912 No. 30, s. 87A (5)-(8); 1930 No. 18, s. 114A (5)-(8).

10 (2) While a nomination made by the secretary of an industrial union under clause 4 for a particular appeal remains unrevoked, a nomination made generally by that secretary shall, for the purposes of that appeal only, be deemed to have been revoked.

(3) A nomination made under clause 4 for a particular appeal has 15 no force or effect for the purposes of any other appeal.

(4) For the purposes only of a particular appeal, where—

(a) a nomination made under clause 4 remains unrevoked at the prescribed time; and

20 (b) the nomination is revoked before the appeal is determined by a Board,

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

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

Vacancy in office of nominated member. cf. 1912 No. 30, s. 87A (9); 1930 No. 18, s. 114A (9).

*Transport Appeal Boards.*

SCHEDULE 1—*continued.*

MEMBERS OF A BOARD—*continued.*

PART 2—*continued.*

9. The secretary to the Transport Appeal Boards may accept a nomination referred to in clause 5 (1) (b) (i) or (2) (b) (i) notwithstanding that it is not communicated to him by an instrument in writing.

Acceptance of certain nominations not in writing.  
cf. 1912 No. 30, s. 87A (10); 1930 No. 18, s. 114A (10).

SCHEDULE 2.

Sec. 34.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. In this Schedule—

Interpretation.

10 “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;

15 “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. (1) Subject to this clause, any proceedings commenced and pending under Division 5 of Part VIII of the Government Railways Act, 1912, or under Division 3 of Part XI 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.

Appeals to a former appellate body.

(2) Subject to this clause, proceedings may be commenced under Division 5 of Part VIII of the Government Railways Act, 1912, or under Division 3 of Part XI 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.



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*Transport Appeal Boards.*

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(3) For the purposes of subclauses (1) and (2)—

5 (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  
10 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—

15 (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,

20 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  
25 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  
30 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  
35 Government Railways Act, 1912, or section 115F of the Transport Act, 1930, as in force before the appointed day.

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*Transport Appeal Boards.*

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(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. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

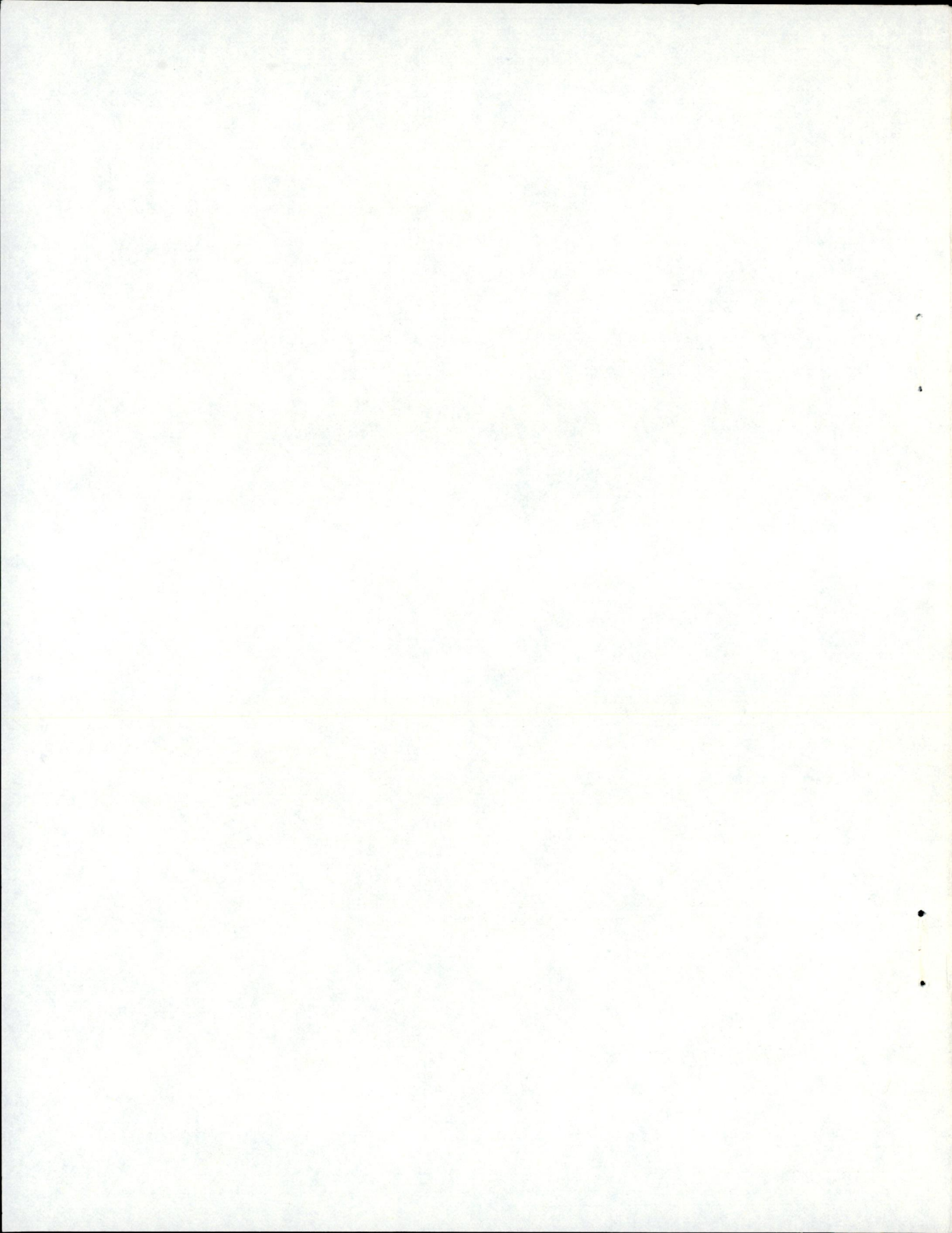
(2) The provisions of clause 18 (2)–(4) of Schedule 8 to the Transport Authorities Act, 1980, apply to and in respect of regulations made under this clause in the same way as they apply to and in respect of regulations made under clause 18 of that Schedule.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1980  
(55c)





**TRANSPORT APPEAL BOARDS ACT, 1980, No. 104**

**New South Wales**



ANNO VICESIMO NONO

**ELIZABETHÆ II REGINÆ**

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**Act No. 104, 1980.**

An Act to provide for the constitution of Transport Appeal Boards and to make provision with respect to appeals by officers and employees of the State Rail Authority, the Urban Transit Authority and the Department of Motor Transport. [Assented to, 1st May, 1980.]

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*Transport Appeal Boards.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title.     **1.** This Act may be cited as the "Transport Appeal Boards Act, 1980".

Commence-     **2.** (1) This section, section 1 and section 35 shall commence  
ment.           on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on 1st July, 1980.

Arrange-  
ment.

**3.** This Act is divided as follows :—

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—TRANSPORT APPEAL BOARDS—*ss.* 5–12.

PART III.—APPEALS—*ss.* 13–27.

PART IV.—GENERAL—*ss.* 28–35.

SCHEDULE 1.—MEMBERS OF A BOARD.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

Inter-  
pretation.

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

"appeal" means an appeal to a Board;

"Authority" means the State Rail Authority or the Urban Transit Authority;

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*Transport Appeal Boards.*

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“Board” means a Transport Appeal Board constituted under this Act;

“Chairman” means the Chairman of Transport Appeal Boards appointed under section 5 (1);

“functions” includes powers, authorities and duties;

“member” means a member of a Board;

“officer” includes employee;

“regulation” means a regulation under this Act;

“secretary” means the secretary to the Transport Appeal Boards;

“Vice-Chairman” means the Vice-Chairman of Transport Appeal Boards appointed under section 6 (1).

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

(3) In a Schedule to this Act, a reference to a subclause is, unless a contrary intention appears, a reference to a subclause of the clause in which the reference occurs.

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PART II.

TRANSPORT APPEAL BOARDS.

5. (1) The Governor may appoint a Chairman of Transport Appeal Boards.

(2) A Transport Appeal Board shall, in relation to a particular appeal, consist of—

(a) the Chairman;

Constitution  
of Boards.  
cf. 1912  
No. 30,  
s. 87 (1);  
1930 No.  
18, s. 114  
(1).

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*Transport Appeal Boards.*

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- (b) 1 member who shall be an officer authorised in accordance with Part 1 of Schedule 1; and
- (c) 1 member who shall be a nominated member within the meaning of clause 5 or 8 of Part 2 of Schedule 1.

Vice-Chairman.  
cf. 1912  
No. 30,  
s. 87(1)  
(a); 1930  
No. 18,  
s. 114 (1)  
(a).

**6.** (1) The Governor may appoint a Vice-Chairman of Transport Appeal Boards.

(2) Where the Chairman is absent from any meeting of a Board, the Vice-Chairman may exercise the functions of the Chairman and shall be deemed to be the Chairman at that meeting.

Term of office of Chairman and Vice-Chairman.  
cf. 1912  
No. 30,  
s. 87 (1)  
(a); 1930  
No. 18,  
s. 114 (1)  
(a).

**7.** (1) The Chairman and Vice-Chairman shall hold office for such term, not exceeding 5 years, as may be specified in their respective instruments of appointment.

(2) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of any person as Chairman or Vice-Chairman, and a person is not, in his capacity as Chairman or Vice-Chairman, subject to those provisions.

Functions of Boards, the Chairman, Vice-Chairman and members.

**8.** A Board, the Chairman, the Vice-Chairman and the members shall have and may exercise the functions conferred upon it or them by or under this Act, the Transport Act, 1930, the Transport Authorities Act, 1980, or any other Act.



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*Transport Appeal Boards.*

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

Voting at meetings of Boards. cf. 1912 No. 30, s. 88 (1); 1930 No. 18, s. 115 (1).

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

Disqualification. cf. 1912 No. 30, s. 89; 1930 No. 18, s. 115A.

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

Sittings of Boards. cf. 1912 No. 30, s. 88 (2); 1930 No. 18, s. 115 (2).

**12.** Schedule 1 has effect.

Members of a Board.

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PART III.

APPEALS.

**13.** 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.

Lodgment of appeals. cf. 1912 No. 30, s. 91; 1930 No. 18, s. 115C.

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*Transport Appeal Boards.*


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Time for  
hearing of  
appeals.  
cf. 1912  
No. 30,  
s. 91;  
1930 No.  
18, s. 115c.

**14.** (1) Subject to subsection (2), an appeal shall be heard by a Board within 30 days from the date of its lodgment with the secretary.

(2) Where—

- (a) the volume of work confronting a Board is such that an appeal cannot be heard conveniently within 30 days;
- (b) owing to illness or unavailability of witnesses, the Chairman or members of a Board, the appeal cannot be heard within 30 days;
- (c) criminal proceedings have been commenced against an appellant for any offence (being criminal proceedings in respect of which the issues required to be determined are so closely related to the issues for determination by a Board that, in the opinion of the Board, it is reasonable to adjourn the hearing of the appeal pending the outcome of the criminal proceedings); or
- (d) the parties to the proceedings before a Board agree that the hearing should be adjourned,

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

Convening  
of a  
meeting  
of a  
Board.

cf. 1912 No.  
30, ss. 87  
(3), 90;  
1930 No. 18,  
ss. 114 (2),  
115B.

**15.** 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 appeal.

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*Transport Appeal Boards.*

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**16.** (1) At the hearing of an appeal by a Board, the employer's case shall be presented first.

Order of presentation of cases.

(2) Nothing in subsection (1) removes from an appellant or any other person the onus of proving any ground on which he relies.

**17.** (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.

Evidence.

(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.** (1) In relation to an appeal, the Chairman or the Vice-Chairman, by instrument in writing issued before or during the hearing of the appeal by a Board—

Discovery of documents, attendance of witnesses, etc.

(a) may require a person, being a party to the appeal or the employer of a party to the appeal, to produce, on or before such date as is specified in the instrument, for the inspection of any other party to the appeal so specified, any document or exhibit relevant to the appeal and which is so specified;

(b) may require a party to the appeal to do either or both of the following things, namely :—

(i) to lodge with the Board, on or before such date as is specified in the instrument, a written case setting out the arguments on which the person relies in relation to the appeal;

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*Transport Appeal Boards.*


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- (ii) to serve, on or before such date as is specified in the instrument, on any other such person so specified, a copy of a written case referred to in subparagraph (i);
- (c) may require the parties to the appeal to lodge with the Board, on or before such date as is specified in the instrument, a statement of such facts or matters as are agreed upon between them in relation to the appeal;
- (d) may require any person to appear before the Board and to give evidence; and
- (e) may require any person to produce before the Board any document or exhibit relevant to the appeal.

(2) A person who fails or neglects to comply with a requirement made of him under subsection (1) is guilty of an offence against this Act and liable on conviction before a court of petty sessions constituted by a stipendiary magistrate sitting alone to a penalty not exceeding \$500.

Administra-  
tion of  
oath.

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

Representa-  
tion.  
cf. 1912 No.  
30, s. 92  
(2);  
1930 No. 18,  
s. 115E (2).

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

Adjourn-  
ment.

**21.** (1) Subject to section 14, a Board may from time to time adjourn the hearing of an appeal to such times, dates and places and for such reasons as it thinks fit.

(2) In the absence from a sitting of a Board of 1 or 2 members of the Board, the remaining member or members may exercise the Board's powers under subsection (1).

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*Transport Appeal Boards.*

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**22.** (1) An appellant may at any time withdraw his appeal, whether or not a Board has commenced to consider the appeal. Withdrawal of appeals.

(2) Where the consideration by a Board of an appeal has not commenced, the appellant may withdraw his appeal by notifying the secretary, in writing, that he withdraws his appeal.

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

**23.** (1) A Board may confirm or modify any decision appealed against or make any such order thereon as it thinks fit. Decision of a Board.

(2) Except as provided in section 24, a decision of a Board shall be final and conclusive.

cf. 1912 No. 30, ss. 92 (3), 93 (1); 1930 No. 18, ss. 115E (3), 115F (1).

**24.** (1) Where, by its decision, a Board imposes punishment involving—

- (a) dismissal;
- (b) reduction of rank, position, grade or pay; or
- (c) suspension for a period of 1 week or more,

the appellant may, within 7 days after being informed of the decision, appeal from the decision—

- (d) where he was an officer of the State Rail Authority at the time that the matter, the subject of his appeal to the Board, arose—to that Authority;
- (e) where he was an officer of the Urban Transit Authority at the time that the matter, the subject of his appeal to the Board, arose—to that Authority; or
- (f) where he was an officer of the Department of Motor Transport at the time that the matter, the subject of his appeal to the Board, arose—to the Commissioner for Motor Transport.

Appeal against a Board's decision in certain cases.  
cf. 1912 No. 30, s. 93;  
1930 No. 18, s. 115F.

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*Transport Appeal Boards.*

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(2) An Authority or the Commissioner for Motor Transport may hear, and may confirm, modify or otherwise determine an appeal made to it or him under this section.

(3) A decision of an Authority or of the Commissioner for Motor Transport made under subsection (2) shall be final and conclusive.

(4) In the hearing of an appeal under this section—

- (a) the Authority or the Commissioner for Motor Transport, as the case may be, may require a person giving evidence before it or him to give that evidence on oath or by way of a declaration; and
- (b) the appellant shall have the like rights and privileges as he had before the Board from which the appeal is made.

Delegation  
by Commis-  
sioner for  
Motor  
Transport  
of func-  
tions under  
sec. 24.

**25.** (1) In this section, "Commissioner" means Commissioner for Motor Transport.

(2) The Commissioner may, with the approval of the Minister, delegate to an officer of the Department of Motor Transport the exercise of the functions conferred or imposed on him under section 24.

(3) The Commissioner may revoke a delegation made under this section.

(4) A delegation or a revocation of a delegation under this section shall be evidenced by an instrument in writing.

(5) A function, the exercise of which has been delegated under this section, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

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*Transport Appeal Boards.*

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(6) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of the functions delegated, or as to time or circumstances.

(7) Notwithstanding any delegation made under this section, the Commissioner may continue to exercise the functions delegated.

(8) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force or effect as if the act or thing done had been done or suffered by the Commissioner and shall be deemed to have been done or suffered by the Commissioner.

(9) An instrument purporting to be signed by or on behalf of a delegate of the Commissioner in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the Commissioner under seal and, until the contrary is proved, shall be deemed to be an instrument signed by a delegate of the Commissioner under this section.

**26.** For the purposes of section 18 of the Defamation Act, 1974, the proceedings relating to any appeal under this Part shall be deemed to be an inquiry within the meaning of that section.

Application  
of the  
Defamation  
Act, 1974.

**27.** 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 him at the hearing which is relevant to the appeal.

Offences  
relating  
to secrecy  
of informa-  
tion.

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*Transport Appeal Boards.*

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## PART IV.

## GENERAL.

Costs and expenses of Boards. cf. 1912 No. 30, s. 87 (4); 1930 No. 18, s. 114 (3).

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

Records of proceedings. cf. 1912 No. 30, s. 90; 1930 No. 18, s. 115B.

**29.** 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.

Supply of copies of statements, etc., to appellant. cf. 1912 No. 30, s. 91A; 1930 No. 18, s. 115D.

**30.** (1) Where an officer of the State Rail Authority, the Urban Transit Authority or the Department of Motor Transport has lodged an appeal against punishment imposed, he shall, on application, be entitled to be supplied by the Authority or the Department, as the case may be, without cost to himself with copies of all statements or reports which have been submitted to the Authority or the Department, as the case may be, in connection with the incident or incidents which formed the basis for the punishment against which he 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 appeal.

(3) No proceedings, civil or criminal, shall lie or be allowed against the State Rail Authority, the Urban Transit Authority or the Department of Motor Transport, 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.



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*Transport Appeal Boards.*

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**31.** (1) The Minister by instrument in writing may refer to the Chairman or the Vice-Chairman for investigation and report any matter relating to the promotion or discipline of officers of the State Rail Authority, the Urban Transit Authority or the Department of Motor Transport.

Reference of certain matters to Chairman or Vice-Chairman for investigation.

(2) The State Rail Authority or the Urban Transit Authority by instrument in writing may, in relation to its officers, or the Commissioner for Motor Transport by instrument in writing may, in relation to officers of the Department of Motor Transport, refer to the Chairman or Vice-Chairman for investigation and report any matter relating to promotion or discipline.

(3) The Chairman or Vice-Chairman, as the case may be, shall carry out an investigation and submit a report in accordance with a reference made under subsection (1) or (2).

**32.** (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.

Regulations.  
cf. 1912 No. 30, s. 88 (3); 1930 No. 18, s. 263.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to—

- (a) the method of appealing to, and the procedure of, a Board;
- (b) subject to the Statutory and Other Offices Remuneration Act, 1975, the payment of salary, fees and allowances to the Chairman, Vice-Chairman and members;
- (c) the payment of witnesses' and other expenses;
- (d) the issue of transport passes to witnesses and appellants;
- (e) the payment of the salaries of witnesses and appellants during proceedings on an appeal; and
- (f) frivolous appeals.

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*Transport Appeal Boards.*

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(3) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors; or
- (b) apply differently according to different factors of a specified kind,

or may do any combination of those things.

(4) The regulations may impose a penalty not exceeding \$100 for an offence against the regulations.

Proceedings for offences.

**33.** Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate or any 2 justices of the peace.

Savings and transitional provisions.

**34.** Schedule 2 has effect.

Rights of appeal to any other board or tribunal barred.

**35.** (1) Notwithstanding anything contained in any other Act, where, in respect of a decision—

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

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

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*Transport Appeal Boards.*

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

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SCHEDULE 1.

MEMBERS OF A BOARD.

PART 1.

*Member Authorised by Employing Authority.*

1. Where an appeal is lodged by an officer of an Authority, the State Rail Authority, acting in consultation with the Urban Transit Authority where appropriate, shall, on being advised of the lodging of the appeal, authorise an officer of either of those Authorities (other than an officer of the branch to which the appellant belongs) to be a member of the Board hearing the appeal.

Secs. 5 (2)  
(b), (c), 12.  
cf. 1912  
No. 30,  
s. 87 (1)  
(b);  
1930 No.  
18, s. 114  
(1) (b).

Authorisa-  
tion of an  
officer of  
an  
Authority  
as a  
member of  
a Board.

2. Where an appeal is lodged by an officer of the Department of Motor Transport, the Commissioner for Motor Transport, on being advised of the lodging of the appeal, shall authorise an officer of the Department (other than an officer of the branch to which the appellant belongs) to be a member of the Board hearing the appeal.

Authorisa-  
tion of an  
officer of  
the Depart-  
ment of  
Motor  
Transport  
as a  
member of  
a Board.

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PART 2.

*Member Nominated by Industrial Union.*

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

“industrial union” means an industrial union of employees registered as such under the Industrial Arbitration Act, 1940, or an association of employees registered as an organization under the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth, as subsequently amended;

Interpreta-  
tion.  
cf. 1912  
No. 30,  
s. 87<sup>A</sup> (1);  
1930 No.  
18, s. 114<sup>A</sup>  
(1).

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*Transport Appeal Boards.*


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 SCHEDULE 1—*continued.*

 MEMBERS OF A BOARD—*continued.*

 PART 2—*continued.*

“prescribed time”, in relation to an appeal, means—

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

or such earlier time as the Chairman, at the request or with the consent of the appellant, determines;

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

Nomina-  
tion of a  
member of  
a Board  
by an  
industrial  
union.  
cf. 1912  
No. 30,  
s. 87A (3);  
1930 No.  
18, s. 114A  
(3).

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

- (a) may, by instrument in writing furnished to the secretary to the Transport Appeal Boards, nominate an officer of either of those Authorities to be a representative on a Board hearing appeals lodged by officers of the State Rail Authority or the Urban Transit Authority; and
- (b) may, by instrument in writing so furnished, revoke that nomination.

(2) The secretary of an industrial union of which officers of the Department of Motor Transport are, or are entitled or eligible to be, members—

- (a) may, by instrument in writing furnished to the secretary to the Transport Appeal Boards, nominate an officer of that Department to be a representative on a Board hearing appeals lodged by officers of that Department; and
- (b) may, by instrument in writing so furnished, revoke that nomination.

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*Transport Appeal Boards.*


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SCHEDULE 1—*continued.*MEMBERS OF A BOARD—*continued.*PART 2—*continued.*

5. (1) For the purposes of section 5 (2) (c), “the nominated member”, in relation to an appeal by an officer of an Authority, means an officer of either Authority, being—

- Nominated  
members.  
cf. 1912  
No. 30,  
s. 87A (2);  
1930 No.  
18, s. 114A  
(2).
- (a) if only 1 representative's nomination made under clause 4 (1) by the secretary of an industrial union of which the appellant is a member, or, if he is not a member of any industrial union, of an industrial union of which he is entitled or eligible to be a member, remains unrevoked at the prescribed time—that representative;
- (b) if 2 or more representatives' nominations made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a), or of each of 2 or more industrial unions referred to in paragraph (a), remain unrevoked at the prescribed time—such one of those representatives—
- (i) as the appellant nominates by instrument in writing furnished to the secretary to the Transport Appeal Boards within such period after the prescribed time as the Chairman allows before the hearing of the appeal commences; or
- (ii) if the appellant does not make such a nomination within that period or any such further period or periods—as the Chairman nominates before the hearing commences; or
- (c) if—
- (i) there is no nomination made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a); or
- (ii) no nomination made under clause 4 (1) by the secretary of an industrial union referred to in paragraph (a) remains unrevoked at the prescribed time,

such officer as the Chairman nominates before the hearing commences.

(2) For the purposes of section 5 (2) (c), “the nominated member”, in relation to an appeal by an officer of the Department of Motor Transport, means an officer of that Department, being—

- (a) if only 1 representative's nomination made under clause 4 (2) by the secretary of an industrial union of which the appellant is a member, or, if he is not a member of any industrial union, of

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*Transport Appeal Boards.*


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SCHEDULE 1—*continued.*MEMBERS OF A BOARD—*continued.*PART 2—*continued.*

an industrial union of which he is entitled or eligible to be a member, remains unrevoked at the prescribed time—that representative;

- (b) if 2 or more representatives' nominations made under clause 4 (2) by the secretary of an industrial union referred to in paragraph (a), or of each of 2 or more industrial unions referred to in paragraph (a), remain unrevoked at the prescribed time—such one of those representatives—
- (i) as the appellant nominates by instrument in writing furnished to the secretary to the Transport Appeal Boards within such period after the prescribed time as the Chairman allows before the hearing of the appeal commences; or
  - (ii) if the appellant does not make such a nomination within that period or any such further period or periods—as the Chairman nominates before the hearing commences; or
- (c) if—
- (i) there is no nomination made under clause 4 (2) by the secretary of an industrial union referred to in paragraph (a); or
  - (ii) no nomination made under clause 4 (2) by the secretary of an industrial union referred to in paragraph (a) remains unrevoked at the prescribed time,
- such officer as the Chairman nominates before the hearing commences.

Deemed  
revocation  
of nominations.

cf. 1912  
No. 30,  
s. 87A (4);  
1930 No.  
18, s. 114A  
(4).

6. Without affecting clause 4 (1) (b) or (2) (b), a person's nomination as a representative under clause 4 shall, for the purposes of this Part, be deemed to be revoked—

- (a) if he notifies the secretary to the Transport Appeal Boards, by instrument in writing, that he does not desire to continue as a representative so nominated;
- (b) if he ceases to be an officer of the Authority or Department to which he belonged at the time of his nomination; or

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*Transport Appeal Boards.*

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SCHEDULE 1—*continued.*

MEMBERS OF A BOARD—*continued.*

PART 2—*continued.*

- (c) upon the expiration of the period (if any) specified in the instrument of his nomination as the period for which the nomination is to remain in force.

7. (1) A nomination may be made under clause 4 generally or for a particular appeal and, unless expressed to have been made for a particular appeal, shall be deemed to have been made generally.

Nominations may be general or particular.

(2) While a nomination made by the secretary of an industrial union under clause 4 for a particular appeal remains unrevoked, a nomination made generally by that secretary shall, for the purposes of that appeal only, be deemed to have been revoked.

cf. 1912 No. 30, s. 87A (5)–(8); 1930 No. 18, s. 114A (5)–(8).

(3) A nomination made under clause 4 for a particular appeal has no force or effect for the purposes of any other appeal.

(4) For the purposes only of a particular appeal, where—

- (a) a nomination made under clause 4 remains unrevoked at the prescribed time; and  
(b) the nomination is revoked before the appeal is determined by a Board,

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

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

Vacancy in office of nominated member.  
cf. 1912 No. 30, s. 87A (9); 1930 No. 18, s. 114A (9).

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*Transport Appeal Boards.*


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SCHEDULE 1—*continued.*MEMBERS OF A BOARD—*continued.*PART 2—*continued.*

Acceptance  
of certain  
nominations  
not in  
writing.  
cf. 1912  
No. 30,  
s. 87A (10);  
1930 No.  
18, s. 114A  
(10).

9. The secretary to the Transport Appeal Boards may accept a nomination referred to in clause 5 (1) (b) (i) or (2) (b) (i) notwithstanding that it is not communicated to him by an instrument in writing.

Sec. 34.

## SCHEDULE 2.

## SAVINGS AND TRANSITIONAL PROVISIONS.

Interpreta-  
tion.

1. 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.

Appeals to  
a former  
appellate  
body.

2. (1) Subject to this clause, any proceedings commenced and pending under Division 5 of Part VIII of the Government Railways Act, 1912, or under Division 3 of Part XI 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 VIII of the Government Railways Act, 1912, or under Division 3 of Part XI 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.



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*Transport Appeal Boards.*

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SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (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.

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*Transport Appeal Boards.*

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SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(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.

Regulations.

3. (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.

*In the name and on behalf of Her Majesty I assent to this Act.*

A. R. CUTLER,  
*Governor.*

*Government House,  
Sydney, 1st May, 1980.*



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