

GOVERNMENT EMPLOYEES (PROMOTIONS APPEAL BOARD).

9° and 10° GEO. VI., No. XXXVIII.

No. 38 of 1945.

AN ACT to provide for appeals in respect of promotions by persons permanently employed by or under the Crown; and for the establishment of a Promotions Appeal Board to hear and determine such appeals, and for other incidental purposes.

[Assented to 21st January, 1946.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Government Employees (Promotions Appeal Board) Act, 1945*

Short title.

2. (1) This Act shall be read in conjunction with the Acts mentioned in the Schedule to this Act.

This Act to be read in conjunction with certain other Acts, but provisions of this Act to prevail.

(2) Where the provisions of any Act mentioned in the Schedule to this Act are in any respect inconsistent with or repugnant to any provisions of this Act, the provisions of this Act shall prevail and have effect according to the tenour thereof, and, to the extent of such inconsistency or repugnancy, the provisions of the Acts mentioned in the Schedule to this Act aforesaid shall be null and void.

3. In this Act, unless the context otherwise requires—
“Appointing Authority” means, in relation to the appointment or employment of employees, the Governor or other person or persons in whom is vested by law authority to appoint or employ an employee.

Interpretation.

“Board” means the Promotions Appeal Board established by this Act.

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See W.A.
No. 34 of
1933, s. 6.

“Department” means any department under the administration of a Minister of the Crown in the Government of the State, and includes the Rural and Industries Bank of Western Australia, every State Trading Concern, the Fremantle Harbour Trust Commissioners, every harbour board, every Government hospital and every Crown instrumentality the employees whereof are remunerated with moneys (other than grants) appropriated by the Parliament of the State to the purposes of such Crown instrumentality. Where two or more departments are administered by the same Minister or where a department is divided into separate sub-departments every one of such two or more departments and every sub-department aforesaid shall for the purposes of this Act be deemed to be and be treated as a separate and distinct department.

If any question shall arise as to whether or not any section of a department is a sub-department or, for the purposes of this Act, should be treated as being a sub-department of the said department, such question shall be determined by the Governor.

See *ibid.*

“Employee” means a person employed under the State in a permanent capacity in any department, who is by the terms of his employment required to give his whole time to the duties of his employment, but does not include the Chief Justice or any Judge of the Supreme Court or the President or any member of the Court of Arbitration. For the purposes of this definition—

- (a) A person shall be deemed to be employed in a permanent capacity when he is regularly employed in the ordinary work of the department in which he is employed in circumstances which justify an expectation that, subject to good conduct and efficiency, his employment will be continuous and permanent.

(b) A person shall not be deemed to be employed in a permanent capacity when he is employed casually or intermittently or in connection with a particular work or undertaking the completion of which will put an end to his employment, or when he is employed as a temporary employee in the Public Service under the provisions of section thirty-six of the Public Service Act, 1904-1935.

“Government hospital” means any hospital, maternity home, or convalescent home established by the Government of the State and maintained and managed wholly by such Government as a Government institution.

“Minister” means the Minister of the Crown from time to time charged with the administration of this Act.

“Recommending Authority” means, in relation to the promotion of employees, the Public Service Commissioner or other person or persons in whom is vested by law, authority to recommend direct to an appointing authority the appointment or employment of an employee by way of promotion.

4. Where at the time of the commencement of this Act a vacancy exists or whenever, after the commencement of this Act, a vacancy occurs or a new office is created in any department and an employee is eligible for appointment to or employment in such vacancy or new office by way of promotion and the appointment to or employment in such vacancy or new office of a person is subject to the right of appeal conferred upon employees by this Act, the following provisions shall apply:—

Provisions relating to recommendations for promotions.

(a) Notice of the vacancy or of the creation of the new office shall be published in such manner and for such period as shall be prescribed by regulations, as will afford to employees who are eligible, a reasonable opportunity to make application for appointment to or employment in such vacancy or new office;

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- (b) Such notice shall specify a date on or before which applications for appointment to or employment in such vacancy or new office shall be receivable by the recommending authority concerned;
- (c) The recommending authority concerned shall not recommend any person for appointment to or employment in such vacancy or new office until after the expiration of the period fixed for the receipt of applications;
- (d) Within seven days after making his recommendation the recommending authority shall cause notice in writing in the prescribed form giving particulars of the recommendation made by him to be served upon each and every one of the applicants, and stating that, subject to the provisions of this Act the applicant who receives such notice may appeal against the appointment to or employment in the said vacancy or new office of the applicant who has been recommended for such appointment or employment.
- (e) Nothing in the foregoing paragraphs of this section shall operate to prevent the immediate appointment to or employment in such vacancy or new office of the applicant recommended, but any such appointment or employment of such applicant shall be provisional and temporary only pending the hearing and determination of any appeals against such appointment or employment under this Act if any such appeals are made, or, if no such appeal is made, pending the expiration of the period fixed by or under this Act for the making of such appeals, as the case may be.

Appeal by
employee
against pro-
motion of
another.
Qld. 13 Geo.
V. No. 31, s.
23.
Qld. 5 Geo.
V. No. 24, s.
21.
Qld. 1 Geo.
VI. No. 24, s.
57.
13 Geo. V
No. 31, s. 23.

5. (1) Save as in this section hereafter provided, if a vacancy in or a new office created in a department is filled by the promotion (whether with or without transfer) of an employee of that or another department who has been recommended for such vacancy or new office by the recommending authority concerned any employee who applied for appointment to or employment in such vacancy or new office and has not been recommended

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therefor and who considers himself more entitled to the promotion than the employee who has been promoted may in such manner and within such time as is prescribed appeal against such promotion of such other employee to the Promotions Appeal Board established under this Act.

Provided that:—

(a) an appeal shall not lie—

(i) in respect of any office or class of office which entitles the employee holding the same to salary or wages at a maximum rate higher than seven hundred and fifty pounds per annum (exclusive of the amounts of basic wage adjustments or of any living or other allowances) unless the Governor shall declare upon special grounds that such office or class of office shall be excluded from the operation of this paragraph; or

13 Geo. V.
No. 31, s. 23
proviso (a).

(ii) by an employee who having attained the age for compulsory retirement applicable to him has been continued in his service as an employee;

13 Geo. V.
No. 31, s. 23
proviso (b).

(b) where the terms and conditions of employment appertaining to such vacancy or new office are or will be regulated by the provisions of an award or industrial agreement in force under the Industrial Arbitration Act, 1912-1941, only those employee applicants who, when they make application for appointment to or employment in such vacancy or new office, are members of an industrial union which is a party to such award or industrial agreement shall have the right of appeal under this section.

(2) For the purposes of this section the appointment to a vacancy or a new office of an employee who voluntarily relinquishes a higher position or is transferred to another department to a position of the same classification as that then last held by him shall be considered as promotion.

5 Geo. V.
No. 24, s. 21
(1).

Establishment
and constitution
of Promotions Ap-
peal Board.
Qld. 13 Geo.
V. No. 31,
s. 35.
Qld. 5 Geo.
V. No. 24, s.
30.
Qld. 1 Geo.
VI. No. 12,
s. 57 (2).

6. (1) For the purposes of this Act a Board to be known as "The Promotions Appeal Board" is hereby established.

(2) Subject to section seven of this Act the Board shall consist of three members, and subject as hereinafter provided, shall comprise the following persons:—

(a) A stipendiary or police or resident Magistrate to be appointed by the Governor, on the nomination of the Minister, who shall be the Chairman; and

(b) A person in each case to be appointed by the Governor on the nomination of the Minister to be and act as the representative of the recommending authority who or which recommended the promotion which is appealed against; and

(c) An employees' representative appointed in each case by the Union of which the employee appellant is a member, provided that—

(i) If there be no such Union, or if the Union fail to appoint a representative at the latest fourteen days before the date of hearing of the appeal, the employee appellant may by writing under his hand given to the secretary to the Board appoint a person to be and act as the employees' representative on the hearing of the appeal.

(ii) The term "Union" means an industrial union of workers within the meaning of the Industrial Arbitration Act, 1912-1941, and includes the Civil Service Association of Western Australia, Incorporated, the State School Teachers Union of W.A., Incorporated, and the Western Australian Railway Officers' Union.

(3) Provided that and notwithstanding anything to the contrary contained in subsection (2) of this section—

(a) Where the employee appellant is a member of the Civil Service Association of Western Australia, Incorporated, and is not a member of another industrial union of workers, the person who shall act on the Board at the hearing of the appeal as the employees' representative under paragraph (c) of subsection (2) of this section shall be such one of the members of the Public Service Appeal Board elected by

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the Civil Service Association of Western Australia, Incorporated, under paragraph (a) of subsection (2) of section three of the Public Service Appeal Board Act, 1920-1943, and for the time being holding office as such member as the Executive Committee of the said Association shall nominate.

- (b) Where the employee appellant is a member of the teaching staff of the Education Department and is a member of the State School Teachers Union of W.A. Incorporated and is not a member of another industrial union of workers, the person who shall act on the Board at the hearing of the appeal as the employees' representative under paragraph (c) of subsection (2) of this section shall be the member of the Public Service Appeal Board elected by the State School Teachers Union of W.A. Incorporated under paragraph (b) of subsection (2) of section three of the Public Service Appeal Board Act, 1920-1943, and for the time being holding office as such member.

(4) The Board shall have jurisdiction to hear and determine all appeals which lie and are made under this Act.

7. Whenever two or more employee appellants appeal against the same promotion of another employee the following provisions shall apply:—

Constitution of Board in cases of two or more appeals against the same promotion.

- (a) All the appeals shall be heard and determined together;
- (b) If all the employee appellants are members of the same union, one employees' representative only for all such employee appellants shall be appointed by the union of which they are members as aforesaid, and such employees' representative shall take part in and exercise jurisdiction as a member of the Board in the hearing and determination of all the appeals of such employee appellants;
- (c) If the employee appellants are not all members of the same union, the several unions of which

the employee appellants are members respectively shall within the prescribed time acting together by mutual arrangement, or, in default of such mutual arrangement, acting in accordance with the regulations, appoint one person to be the employees' representative member of the Board constituted to hear and determine the appeals of all of the said employee appellants; and the person so appointed shall be and may exercise jurisdiction as a member of the Board on the hearing and determination of each and every one of the said appeals.

(d) Where—

(i) in any case provided for in paragraph (c) hereof, the several unions fail to appoint a representative in accordance with that paragraph at the latest fourteen days before the date fixed for the hearing of the appeals; or

(ii) not any of the employee appellants are members of a union—

the employee appellants shall acting together by mutual arrangement, or, in default of such mutual arrangement, acting in accordance with the regulations appoint one person to be the employees' representative member of the Board constituted to hear and determine the appeals of all the said employee appellants and shall give notice of such appointment in writing signed by all of them to the secretary to the Board, and the person so appointed shall be and may exercise jurisdiction as a member of the Board on the hearing and determination of each and every one of the said appeals.

(e) When, as provided for in paragraph (a) of this section, two or more appeals against the same promotion are heard and determined together, and two or more of such appeals are allowed by the Board, the Board as constituted under this section for the hearing and determination

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of the said appeals shall decide, as between the successful employee appellants, which one of them shall receive the promotion in relation to which the appeals have been successful.

8. In relation to employees who, when a vacancy occurs or a new office is created in a department are absent from their employment under the State by reason of being members (a) of any of the Naval, Military or Air Forces of His Majesty or of any services auxiliary thereto engaged on active service in any war in which His Majesty is then engaged, or, (b) of any of the Naval, Military or Air Forces of His Majesty or of any services auxiliary thereto and have been temporarily retained after the end of any such war on occupational duties in a former enemy or enemy occupied territory or for any other similar purpose, the following provisions shall apply and have effect:—

Special provision for employees absent on war service.

(i) For the purposes of this Act the permanent Head or other officer having under the Ministerial Head the supreme administrative control of the department in which the vacancy occurs or the new office is created shall be deemed to be the attorney of every employee employed in such department and absent from his employment as aforesaid with full power and authority in the name of the employee or in his own name for and on behalf of the employee—

- (a) to make application for the appointment of the employee to such vacancy or new office; and
- (b) in the event of the employee not being recommended for such appointment, to appeal under the provisions of this Act against any recommendation which has been made in relation to the filling of such vacancy or new office.

Provided that where such permanent Head or other officer aforesaid is the recommending officer in relation to the filling of the said vacancy or new office the officer

in such department next after such permanent Head or other officer aforesaid in administrative control of the department shall instead of such permanent Head or other officer aforesaid be deemed to be the attorney of every employee aforesaid as provided for in this paragraph.

(ii) The Governor may make special regulations for the purpose of making every reasonable provision which he deems necessary to ensure that employees to which this section relates shall not in any way suffer any loss of opportunity to apply for appointments by way of promotion in their employment under the State as such employees or to exercise the right of appeal conferred upon such employees by this Act.

(iii) Wherever the terms "employee" or "employee appellant" are used in any section (other than this section) of this Act such terms shall, unless the context otherwise requires, include the attorney of an absent employee under this section.

Meetings of Board.
Qld. 13 Geo.
V. No. 31
s. 35 (2).

9. The Board shall meet for the despatch of business as often as is required, and as soon as is reasonably possible after an appeal is lodged shall subject to the regulations fix the earliest convenient date for the hearing thereof. The Board shall keep a record of its proceedings and decisions thereon, which shall be available for future reference by any party associated with an appeal.

Secretary to Board.
Qld. 13 Geo.
V. No. 31 s.
35 (3).

10. The Minister shall appoint or instruct a person to act as the secretary to the Board, and such secretary shall convene all meetings of the Board.

Remuneration of members and secretary.

11. The remuneration (if any) which may be paid to the members of the Board, and to the secretary to the Board shall be in accordance with rates which may be prescribed by regulations.

Board to act by majority.
Qld. 13 Geo.
V. No. 31 s.
35 (5).

12. The jurisdiction of the Board, whether constituted as provided in subsection (2) of section six, or as provided in section seven of this Act, shall be exercised by all the members thereof sitting together, and where all

the members are not unanimous upon any question, the decision of the majority of the said members shall prevail and shall be deemed to be the decision of the Board.

13. (1) Subject as hereinafter provided, appeals under this Act shall be heard by the Board in Perth or elsewhere as the Board may in any particular case determine.

Provided that where employees are employed in remote localities, and where arrangements cannot conveniently be made for their attendance in person whether as appellants or witnesses, or where they would be subjected to great expense in travelling to appear before the Board, the Board may appoint a competent person or persons to take evidence on oath in that locality concerning the matter of appeal. Such evidence shall be forwarded for consideration of the Board.

(2) (a) Where the Board considers that any employee appellant had reasonable grounds for lodging and proceeding with his appeal, the Board when it decides such appeal may in writing signed by the Chairman recommend the payment to such employee appellant of reasonable expenses in respect of—

- (i) time necessarily lost from his employment in attending on the hearing of his appeal; and also;
- (ii) where he necessarily attends on the hearing of his appeal by the Board at a city or town elsewhere than the city or town in which he is employed, expenses incurred by him in travelling and for board and lodging.

(b) Any such recommendation shall be transmitted to the Governor.

(c) If the Governor approves of any recommendation referred to him as aforesaid, the amount of expenses recommended shall be paid in accordance with such recommendation, as a part of the cost and expense of administering this Act.

(d) The applicant recommended may if he defend his claim at the appeal be granted by the Board expenses similar in every respect to those laid down in this section for the appellant and such expenditure to be a part of the cost and expense of administering this Act.

Venue.
Qld. 13 Geo.
V. No. 31
s. 36 (3).
Qld. 1 Geo.
VI. No. 12
s. 57 (4).
Qld. 5 Geo.
V. No. 24 s.
30 (5).

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Lodging and hearing of appeal.
Qld. 13 Geo. V. No. 31 s. 36 (1).
Qld. 5 Geo. V. No. 24 s. 30 (6).
Qld. 1 Geo. VI. No. 12 s. 57 (6).

14. (1) Every appeal shall be in writing, shall clearly and concisely set forth the grounds upon which the appeal is made, shall be despatched or delivered to the Secretary of the Board within the prescribed time, and, subject to this Act, shall be heard by the Board as early as practicable after the date when the appeal is received by the Secretary. A copy of the appeal shall also be served on the recommending authority concerned within the prescribed time aforesaid.

(2) An appeal may be made on the ground of:—

- (a) Superior efficiency to that of the employee promoted; or
- (b) Equal efficiency and seniority to the employee promoted.

(3) For the purposes of subsection (2) of this section, “efficiency” means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit, diligence and good conduct.

Provided that, in the case of an employee who is a returned soldier, the term shall include such efficiency as in the opinion of the Permanent Head of Department concerned or the Board, as the case may be, the employee would have attained but for his absence on war service as such soldier.

“Returned soldier” means a person who enlisted or was appointed for war service abroad and who has been on active service as a member of His Majesty’s Forces during the Great War, 1914-1918, or during the war in which His Majesty is engaged at the time of the commencement of this Act or had recently been engaged at the time of such commencement.

“Seniority” means:—

- (a) As between employees holding positions or offices in the same grade or classification when such positions or offices are graded or classified—Seniority by longer period of service in the same grade or classification;
- (b) As between employees holding positions or offices in different grades or classifications when such positions or offices are graded or classified—Seniority by higher grade or higher classification;

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- (c) As between employees engaged in the same kind of employment at the same rate of salary or wages, when the positions or offices held by them are not graded or classified—Seniority by longer period of service at the same rate of salary of wages;
- (d) As between employees engaged in different kinds of employment at different rates of salary or wages, when the positions or offices held by them are not graded or classified—Seniority by higher rate of salary or wages.

(4) The Board may at any stage of the hearing of an appeal decline to hear it further and may summarily dismiss the same on the ground that in the opinion of the Board it is frivolous, unreasonable or vexatious.

Qld. 13 Geo.
V. No. 31
s. 23 proviso.
Qld. 1 Geo.
VI. No. 12
s. 57 (6).

(5) The Board may, if it thinks fit, order an employee appellant to forfeit and pay to the Treasurer a sum not exceeding five pounds if, in the opinion of the Board, his appeal is frivolous, unreasonable or vexatious. Any sum so ordered may be recovered at the suit of the Treasurer as a debt owing to the Crown.

15. The Secretary to the Board shall give to the employee appellant, to the applicant recommended and to the recommending authority who or which recommended the promotion against which the appeal is made at least seven clear days' notice of the date when the appeal will be heard.

Notice of
hearing of
appeal.
Qld. 13 Geo.
V. No. 31
s. 36 (4).
Qld. 5 Geo.
V. No. 24
s. 30 (6).
Qld. 1 Geo.
VI. No. 12
s. 57 (6).

16. (1) Upon the hearing by the Board of an appeal the employee appellant, the applicant recommended and the recommending authority who or which recommended the promotion against which the appeal is made shall be entitled to be represented by an agent who may examine witnesses and address the Board.

Representa-
tion of
parties and
procedure.
Qld. 13 Geo.
V. No. 31
s. 36 (5).
Qld. 5 Geo.
V. No. 24
s. 30 (9).
Qld. 1 Geo.
VI No. 12
s. 57 (7).

(2) The said parties to the appeal shall be entitled to be present in person and give evidence, to subpoena witnesses in the same manner and subject to the same penalties and conditions as witnesses may be summoned to give evidence before justices in petty sessions, and to have all witnesses examined on oath or affirmation.

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Powers and
duties of
Board.

Qld. 13 Geo.
V. No. 31
s. 36 (6).
Qld. 5 Geo.
V. No. 24
s. 30 (10).

17. (1) The Board shall make full inquiry into the claims of the employee appellant and the merits of the applicant recommended.

(2) The Board shall hear all appeals in public except when by its own unanimous decision it directs that any appeal shall be heard in private.

(3) In the hearing and determination of every appeal the Board shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms and shall not be bound by any laws or rules of evidence but may inform its mind on the matter in such a way as it thinks just.

(4) The Board shall have in relation to appeals under this Act all the powers of a Royal Commission under the Royal Commissioner's Powers Act, 1902, and any reference to the Chairman of a Royal Commission under that Act shall in relation to such appeals be deemed to be a reference to the Chairman of the Board.

(5) Where any award or industrial agreement in force under the Industrial Arbitration Act, 1912-1941, is applicable to any position or office in a department and contains any provisions or conditions regulating or affecting the promotion of employees to such position or office, and any employee appeals under this Act against the promotion of another employee to such position or office, the Board when hearing and determining such appeal shall have due regard for the provisions and conditions aforesaid of such award or industrial agreement insofar as the same may be relevant and material to the promotion against which the appeal is made.

Decision of
Board.

Qld. 13 Geo.
V. No. 31
s. 36 (7).
Qld. 5 Geo.
V. No. 24
s. 30 (11).
Qld. 1 Geo.
VI. No. 12
s. 57 (11).

18. (1) The Board may dismiss or allow any appeal, and as soon as reasonably may be shall report its decision in writing to the appointing authority, to the recommending authority, to the applicant recommended, and to the employee appellant concerned.

The Board shall, together with its decision, supply to the recommending authority and the appointing authority copies of the proceedings and notes of evidence taken at the hearing of the appeal.

(2) When the Board allows an appeal it shall, in the report of its decision, name the employee appellant who in its opinion should be promoted to the vacancy or the

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new office in priority to the employee whose promotion to such vacancy or new office has been successfully appealed against.

(3) The decision of the Board in every case shall be final; and, when the Board allows an appeal, its decision shall be binding upon the appointing authority and the recommending authority concerned and due effect to such decision shall be given in accordance with the tenour of the report of the Board by the said appointing authority.

19. Every appointment made by an appointing authority for the purpose of giving effect to a decision of the Board in an appeal under this Act shall be final and binding on all parties concerned, and shall not be subject to any further appeal either under this Act or under any other Act.

Final decision.
Qld. 13 Geo.
V. No. 31
s. 36 (8).
Qld. 1 Geo.
VI. No. 12
s. 58.

20. The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

THE SCHEDULE.

Title of Act.	Number of Act.
Education Act, 1928-1943	No. 33 of 1928.
Government Ferries Act, 1932	No. 14 of 1932.
Government Electric Works Act, 1914	No. 29 of 1915.
Government Railways Act, 1904-1939	No. 23 of 1904.
Government Tramways Act, 1912-1933	No. 58 of 1912.
Industrial Arbitration Act, 1912-1941	No. 57 of 1912.
Police Act, 1892-1940	55 Vict. No. 27.
Public Service Act, 1904-1935	No. 41 of 1904.
Public Service Appeal Board Act, 1920-1943	No. 14 of 1920.
Railways Classification Board Act, 1920-1935	No. 38 of 1920.
Rural and Industries Bank Act, 1944	No. 51 of 1944.
State Trading Concerns Act, 1916	No. 12 of 1917.