

# GOVERNMENT EMPLOYEES (PROMOTIONS APPEAL BOARD).

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No. 31 of 1979.

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AN ACT to amend the Government Employees  
(Promotions Appeal Board) Act, 1945-1978.

[Assented to 3rd October, 1979.]

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

1. (1) This Act may be cited as the *Government Employees (Promotions Appeal Board) Act Amendment Act, 1979.*

Short title  
and citation.

(2) In this Act the Government Employees (Promotions Appeal Board) Act, 1945-1978 is referred to as the principal Act.

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amended by  
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of 1975, 19  
of 1977 and  
87 of 1978.

(3) The principal Act as amended by this Act may be cited as the Government Employees (Promotions Appeal Board) Act, 1945-1979.



conditions of employment appertaining to the vacancy or new office are or will be regulated.

“Returned soldier” means a person who enlisted or was appointed for war service abroad and who by reason thereof was on active service as a member of Her Majesty’s Forces during the World War, 1939-1945.

“Union” means an industrial union within the meaning of the Industrial Arbitration Act, 1912, a trade union within the meaning of the Trade Unions Act, 1902 and an association of employees registered as an organisation pursuant to the provisions of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth or any Act in substitution for that Act, as amended from time to time. ; and

(e) by deleting the interpretation “Recommending Authority”.

5. Section 4 of the principal Act is repealed and re-enacted as follows— Section 4 substituted.

4. Where a vacancy occurs or a new office is created in any department and an employee is eligible for promotion to such vacancy or new office and the promotion to 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 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 promotion to such vacancy or new office;

- (b) such notice shall specify a date on or before which applications for promotion to such vacancy or new office shall be receivable by the promoting authority concerned;
- (c) the promoting authority concerned shall not promote any person to such vacancy or new office until after the expiration of the period fixed for the receipt of applications;
- (d) when selecting an applicant for promotion, the promoting authority shall have regard to the relative efficiency of all applicants;
- (e) within seven days after making a promotion the promoting authority shall cause notice in writing in the prescribed form giving particulars of the promotion 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 promotion to the said vacancy or new office of the applicant promoted;
- (f) nothing in this section shall operate to prevent the immediate promotion to such vacancy or new office of the applicant so promoted, but any such promotion of such applicant shall be provisional and temporary pending the hearing and determination of any appeals against such promotion 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. .

6. Section 5 of the principal Act is amended— Section 5  
amended.

(a) as to subsection (1)—

- (i) by substituting for the words “recommended for” in line five the words “promoted to”;
- (ii) by substituting for the word “recommending” in line six the word “promoting”;
- (iii) by substituting for the words “appointment to or employment in” in lines seven and eight the words “promotion to”;
- (iv) by substituting for the word “recommended” in line nine the word “promoted”;
- (v) by deleting paragraph (b) and substituting the following paragraph—
  - (b) where in respect of the vacancy or new office there is a relevant union, an employee applicant has the right of appeal under this section—
    - (i) if he was, at the time he made his application for promotion to the vacancy or new office, a member of the relevant union;
    - (ii) if he was not, at that time, a member of the relevant union but is employed in the department in which the vacancy or new office occurs and all the other applicants for promotion to the vacancy or new office were not, at that time, members of the relevant union; or

(iii) if, at that time, he was not a member of the relevant union but held a certificate of exemption issued under the provisions of section 61B of the Industrial Arbitration Act, 1912 or section 144A of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth or any Act in substitution for that Act, as amended from time to time

and not otherwise, unless the Minister declares upon special grounds that this paragraph does not apply in respect of the vacancy or new office. ;

and

(b) by repealing subsection (2) and re-enacting that subsection as follows—

(2) For the purposes of this section where a vacancy or a new office is filled by an employee—

(a) who is transferred within the same department on the same grade or classification, that transfer shall not be considered as promotion;

(b) who is transferred within the same department and who voluntarily relinquishes a position on a higher grade or classification, that transfer shall not be considered as promotion. .

7. Subsection (2) of section 6 of the principal Act is amended—

Section 6  
amended.

- (a) by deleting paragraph (b) and substituting the following paragraph—
  - (b) A person nominated by the employer who or which made the promotion which is appealed against; ; and
- (b) by deleting paragraph (c) and substituting the following paragraphs—
  - (c) A person nominated by the relevant union unless—
    - (i) the appellant is not a member, or if there is more than one appellant all the appellants are not members, of that union;
    - (ii) there is no relevant union; or
    - (iii) there is a relevant union and it fails to nominate a person at the latest fourteen clear days before the date of hearing,

in which case the Board shall include,

- (iv) if there is only one appellant, a person nominated by the appellant; or
- (v) if there is more than one appellant, a person nominated unanimously by all appellants, or in default of an agreement thereon a person selected by the Chairman of the Board from persons nominated respectively by the appellants,

and each nomination under this subsection shall be in writing duly signed on behalf of the employer or the relevant union or by the

appellant or appellants, as the case requires,  
and delivered to the Secretary of the Board;  
and

- (d) Where in the case provided for in paragraph (c) of this subsection there is more than one relevant union, a person shall be nominated unanimously by all relevant unions, or in default of an agreement thereon a person shall be selected by the Chairman of the Board from persons nominated respectively by the relevant unions. .

Section 6A  
deleted.

8. The principal Act is amended by deleting section 6A.

Section 7  
substituted.

9. Section 7 of the principal Act is repealed and re-enacted as follows—

Two or more  
appeals.

7. (1) Whenever two or more employee appellants appeal against the same promotion of another employee all appeals shall be heard and determined together.

(2) When 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 to hear the said appeals shall decide, as between the successful appellants, which one of them shall receive the promotion in relation to which the appeals have been successful. .

Section 8  
amended.

10. Section 8 of the principal Act is amended—

(a) as to paragraph (i)—

- (i) by substituting for the word “appointment” in lines one and two of subparagraph (a), the word “promotion”;



- (ii) by substituting for the words “recommended for such appointment” in line two of subparagraph (b), the words “promoted to such vacancy or new office”;
  - (iii) by substituting for the word “recommendation” in line four of subparagraph (b), the word “promotion”;
  - (iv) by substituting for the words “recommending officer” in line three of the proviso to subparagraph (b) the words “promoting authority”; and
- (b) as to paragraph (ii), by substituting for the words “appointments by way of promotions” in lines six and seven, the words “promotion to a vacancy or new office”.

11. The principal Act is amended by deleting section 10 and substituting the following section—

Section 10  
substituted.

10. There shall be a Secretary of the Board—
- (a) who shall be appointed and hold office subject to and in accordance with the Public Service Act, 1978; and
  - (b) who may hold office as such in conjunction with any other office in the Public Service of the State. .

Secretary of  
Board.

12. The principal Act is amended by deleting section 11 and substituting the following section—

Section 11  
substituted.

11. A member of the Board shall, subject to such conditions and restrictions as are prescribed, be entitled to such remuneration, travelling and other allowances as are directed by the Minister. .

Remunera-  
tion of  
members.



- (b) in the case of an employee who is a returned soldier, the term shall include such efficiency as in the opinion of the promoting authority concerned or the Board, as the case may be, the employee would have attained but for his absence on war service.

(5) 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.

(6) The Board may, if it thinks fit, order an appellant to pay to the Treasurer of the State a sum not exceeding twenty-five dollars if, in the opinion of the Board, his appeal is frivolous, unreasonable or vexatious and any sum so ordered may be recovered in a court of competent jurisdiction at the suit of the Treasurer of the State as a civil debt owing to the Crown.

16. The principal Act is amended by repealing section 15.

Section 15  
repealed.

17. Section 16 of the principal Act is amended—

Section 16  
amended.

- (a) by substituting for the words “recommended and the recommending authority who or which recommended” in lines two, three and four of subsection (1) the words “promoted and the promoting authority who or which made”;
- (b) by deleting subsection (2); and
- (c) as to subsection (3)—
- (i) by deleting the words “by or on behalf of the employee appellant” in lines three and four;

(ii) by deleting the words "of the employee appellant" in lines sixteen and seventeen; and

(iii) by substituting for the words "employee appellant" in lines eighteen and nineteen, the words "person calling the witness".

Section 17  
amended.

18. Section 17 of the principal Act is amended—

(a) by deleting subsection (1) and substituting the following subsection—

(1) Subject to paragraph (a) of subsection (4) of section fourteen of this Act, the Board shall make full inquiry into the claims of the employee appellant and the merits of the applicant promoted and consider all such matters up to the closing date of applications for the vacancy. ;

(b) by adding in subsection (5) before the word "award" in line one and again in line ten, the passage "law,"; and

(c) by adding after subsection (5) the following subsection—

(6) The Chairman of the Board shall give all such directions and do all such things as he deems necessary or expedient to give effect to the intention of this Act. .

Section 18  
amended.

19. Section 18 of the principal Act is amended—

(a) by substituting for the passage "appointing authority, to the recommending authority, to the applicant recommended" in lines three, four and five of subsection (1) the passage "promoting authority, to the applicant promoted";

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- (b) by substituting for the words “appointing authority and the recommending authority” in lines three and four of subsection (3) the words “promoting authority”; and
- (c) by substituting for the word “appointing” in line seven of subsection (3) the word “promoting”.

20. Section 19 of the principal Act is amended—

Section 19  
amended.

- (a) by substituting for the word “appointment” in line one, the word “promotion”; and
  - (b) by substituting for the words “an appointing” in line one, the words “a promoting”.
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