

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1943.

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# A BILL

To provide for the constitution of a Crown Employees Appeal Board and to define its powers, authorities, duties and functions; to confer on such Board jurisdiction to hear and determine certain appeals by certain employees of the Crown; to amend the Police Regulation (Appeals) Act, 1923, as amended by subsequent Acts; and for purposes connected therewith.

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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 New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Crown Employees Appeal Board Act, 1943."

Short title and division into Parts.

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(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1, 2.

PART II.—CROWN EMPLOYEES APPEAL BOARD—  
ss. 3-8.

5 PART III.—APPEALS—ss. 9-13.

PART IV.—REGULATIONS—s. 14.

PART V.—AMENDMENT OF POLICE REGULATION  
(APPEALS) ACT, 1923—s. 15.

SCHEDULES.

10 2. (1) In this Act, unless the context or subject <sup>Interpreta-</sup>  
matter otherwise indicates or requires— <sub>tion.</sub>

15 “Association of employees” means any association  
or union of employees the name of which  
appears in the First Schedule to this Act or  
which is added to such Schedule in pursuance  
of this Act.

“Board” means the Crown Employees Appeal  
Board constituted under this Act.

“Chairman” means the chairman of the Board.

20 “Employing authority” means any person whose  
name appears in the Second Schedule to this  
Act or is added to such Schedule in pursuance  
of this Act.

25 “Employer” means an employing authority in  
whose service an officer is employed and, in  
relation to officers of the classes referred to in  
paragraphs (a), (b) and (e) of the definition  
of “Officer,” means the Public Service Board.

“Officer” means any person—

30 (a) who is an officer within the meaning  
of the Public Service Act;

(b) who, being an employee within the  
meaning of the Public Service Act,  
1902, has been continuously employed  
as such an employee for a period of  
not less than one year;

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- (c) who is permanently employed in the service of an employing authority;
- 5 (d) who is employed (otherwise than permanently) in the service of an employing authority and who has been continuously employed in the service of that employing authority for a period of not less than one year;
- 10 (e) who is employed (otherwise than in any of the capacities referred to in paragraphs (a) to (d), both inclusive, of this definition, or as a member of the police force or as an officer of either
- 15 House of Parliament or as a person employed in either of the Departments of the Legislature under the separate control of the President or Speaker or under their joint control) in the service
- 20 of the Crown by any person other than the Public Service Board or an employing authority and who has been continuously so employed for a period of not less than one year;
- 25 but a person who, by the terms of his employment, is employed only during the absence on leave of an officer, shall not, by reason only of paragraph (b) or paragraph (d) or paragraph (e) of this definition, be deemed to be an officer.
- 30 "Prescribed" means prescribed by this Act or by the regulations.
- "Public Service Act" means the Public Service Act, 1902, as amended by subsequent Acts.
- 35 "Public Service Board" means the Public Service Board constituted under the Public Service Act, 1902, as amended by subsequent Acts.
- "Regulations" means regulations made under this Act.
- "Secretary" means the Secretary to the Board.

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(2) (a) If any industrial union of employees registered under the Industrial Arbitration Act, 1940-1943, satisfies the Governor that of the members of such union a substantial number are officers within the meaning of  
5 this Act, the Governor may amend the First Schedule to this Act by inserting therein the name of such union.

(b) The Governor may amend the Second Schedule to this Act by inserting therein the name of any person who, under the authority of any Act, employs  
10 persons on behalf of the Crown.

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PART II.

CROWN EMPLOYEES APPEAL BOARD.

3. (1) There shall be a Crown Employees Appeal <sup>The Board.</sup> Board, which shall have and may exercise and discharge  
15 the powers, authorities, duties and functions conferred and imposed upon the Board by or under this Act.

(2) The Board shall consist of a chairman and members nominated as provided in this Act.

(3) At sittings of the Board three members shall  
20 be present, of whom—

(a) one shall be the chairman;

(b) one shall be an employers' representative; and

(c) one shall be an officers' representative.

(4) Sittings of the Board shall be arranged by the  
25 chairman.

In arranging such sittings the chairman shall, as far as practicable, ensure that the employers' representative is the member or alternate member nominated by the employer in whose service the appellant is employed, and  
30 the officers' representative is the member or alternate member nominated by the association of employees of which the appellant is a member or of an association of employees of which he is eligible for membership.

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(5) At sittings of the Board each member (including the chairman) shall have one vote and the decision of the majority in number of the members shall be the decision of the Board.

5 (6) Each member of the Board, other than the chairman, and each alternate member shall be entitled to receive such fees and allowances as may be prescribed.

10 Any such member or alternate member shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under this section, in addition to any remuneration to which he is otherwise entitled.

4. (1) The chairman shall be appointed by the Chairman.  
Governor and shall be—

15 (a) a judge of the Supreme Court who shall be so appointed on the nomination of the Chief Justice; or

20 (b) a member of the Industrial Commission of New South Wales who shall be so appointed on the nomination of the President of that Commission; or

(c) a person who is eligible for appointment as a judge of the Supreme Court or as a member of the Industrial Commission of New South Wales.

25 (2) (a) Where the person appointed chairman holds the qualification referred to in paragraph (a) of subsection one of this section he shall retain his office as a judge of the Supreme Court and any period during which he serves as chairman shall be computed as part  
30 of his service as such judge for the purposes of section twelve of the Supreme Court and Circuit Courts Act, 1900-1941.

(b) Where the person appointed chairman holds the qualification referred to in paragraph (b) of  
35 subsection one of this section he shall retain his office as a member of the Industrial Commission of New South Wales, and any period during which he serves as chairman shall be computed as part of his service as such member for the purposes of section fourteen of the  
40 Industrial Arbitration Act, 1940-1943.

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(c) Where the person appointed chairman holds the qualification referred to in paragraph (c) of subsection one of this section the following provisions shall have effect:—

- 5 (i) On appointment the chairman shall take the oath of allegiance and the judicial oath.  
 This paragraph extends to any such person appointed to act temporarily as chairman.
- 10 (ii) The chairman shall, subject to this paragraph, hold office during good behaviour, shall have the same rank, title, status and precedence and the same salary, pension and other rights as a puisne judge of the Supreme Court, and shall be removable from office in the same manner only as a judge of the Supreme Court is by law liable to be removed from his office.
- 15 (iii) Such salary and pension shall be paid out of moneys provided by Parliament.
- 20 (iv) The chairman shall retire on the day upon which he attains the age of seventy years, unless he is granted retiring leave, in which case he shall retire on the expiration of such leave.
- 25 (v) The chairman shall not be capable of accepting or holding any other office or any other place of profit within the State except any such judicial office as may be conferred upon him by or under any law of the State.

(3) If the chairman is prevented by any cause from attending to his duties as such the Governor may  
 30 appoint some person qualified to be appointed as chairman to act temporarily as chairman, and such person, while so acting, shall have all the powers of the chairman.

5. (1) The members of the Board who are employers' representatives shall be the members nominated by the  
 35 employers and the members of the Board who are the officers' representatives shall be the members nominated by the associations of employees.

(2) Each employer and each association of employees shall nominate one member of the Board and  
 40 one alternate member.

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Employers'  
representatives and  
officers'  
representatives.

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During the absence from any cause of a member so nominated or during any vacancy in the office of any such member the alternate member may act as a member of the Board, and while so acting shall have all the  
5 powers and authorities of a member.

(3) Every such nomination shall be in or to the effect of the prescribed form and shall be lodged with the Secretary together with the following documents, namely:—

- 10 (a) a written statement signed by the person nominated and signifying his consent to such nomination;
- (b) the oath or affirmation referred to in subsection four of this section sworn or made by the  
15 person nominated.

No such nomination shall take effect unless and until it and the documents referred to in this subsection have been so lodged.

(4) Every person nominated as a member or  
20 alternate member under this section shall, before assuming office, take an oath or make an affirmation in the prescribed form that he will faithfully and impartially discharge the duties of his office.

(5) (a) A person nominated by the Public Service  
25 Board under this section shall be either a member of the Public Service Board or an officer.

(b) A person nominated by any employing authority shall be either an officer, or—

- 30 (i) where the employing authority is a corporate body, a member of the corporate body; or
- (ii) where the employing authority is a corporation sole or an individual, the person constituting the corporation sole or the individual.

(c) A person nominated under this section by  
35 an association of employees shall be an officer.

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**6.** (1) (a) The first nomination of members and alternate members shall be lodged within one month after the commencement of this Act.

Nomina-  
tions of  
employers'  
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tives and  
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tives.

(b) The persons so nominated shall assume  
**5** office on the dates upon which their respective nomina-  
tions take effect and, subject to this Act, shall hold office  
until the thirty-first day of December, one thousand  
nine hundred and forty-seven.

(2) (a) Subsequent nominations of members and  
**10** alternate members shall be lodged in the month of  
November in the year one thousand nine hundred and  
forty-seven and in each third year thereafter.

(b) The persons so nominated shall assume  
**15** office on the first day of January next following the date  
of lodgment of the nomination and shall, subject to this  
Act, hold office for a period of three years.

(3) (a) A nomination to fill a casual vacancy in  
**20** the office of a member or alternate member shall be  
lodged within one month after the occurrence of the  
vacancy.

(b) The person so nominated shall assume office  
on the date upon which his nomination takes effect and,  
subject to this Act, shall hold office for the balance of  
his predecessor's term of office.

**25** (4) If no nomination or no effective nomination of  
a member or alternate member is, within the prescribed  
time, lodged by an employer who is required by this Act  
to lodge such nomination, the Governor may appoint  
**30** any person eligible for nomination by such employer to  
be a member or alternate member.

The member or alternate member so appointed shall,  
for all purposes of this Act, be deemed to have been  
nominated by such employer, and shall be an employers'  
representative.

**35** (5) If no nomination or no effective nomination of  
a member or alternate member is, within the prescribed  
time, lodged by an association of employees required by  
this Act to lodge such nomination, the Governor may  
appoint an officer to be a member or alternate member.

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The member or alternate member so appointed shall, for all purposes of this Act, be deemed to have been nominated by such association of employees, and shall be an officers' representative.

5 7. (1) A member of the Board (other than the chairman) or an alternate member shall be deemed to have vacated his office if— Casual vacancies.

10 (a) he becomes bankrupt, compounds with his creditors or makes an assignment of his estate for their benefit; or

(b) he becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or

15 (c) he is convicted in New South Wales of a felony or of a misdemeanour which is punishable by imprisonment for twelve months or upwards, or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or a misdemeanour which is punishable as aforesaid; or

20 (d) he resigns his office by writing under his hand addressed to the Secretary; or

(e) he dies; or

25 (f) he ceases to be an officer or, as the case may be, to hold the office by virtue of which he was nominated as member or alternate member; or

(g) is removed from office by the Governor.

(2) A member of the Board (other than the chairman) or an alternate member may be removed from office 30 by the Governor if, without just cause, he neglects or refuses to sit as a member of the Board at any sitting at which he is required, by notice given pursuant to this Act, to attend as an employers' representative or an officers' representative as the case may be.

35 8. (1) The Governor may appoint and employ a secretary and such other officers and employees as may be necessary for the execution of this Act. Secretary and officers.

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(2) It shall be the duty of the Secretary to convene all sittings of the Board and to keep a record of all proceedings and decisions of the Board.

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PART III.

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## APPEALS.

9. This Part shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Commence-  
ment of  
Part III.

10. (1) Notwithstanding anything contained in any other Act, an officer, deeming himself to be adversely affected by any decision or determination of the nature referred to in this subsection made after the commencement of this Part by the employer or other the person in whose service he is employed, may appeal to the Board against such decision or determination. Appeals  
to  
Board.

The decisions and determinations in respect of which an appeal to the Board shall lie under this Act shall be any decision or determination—

- 20 (a) for the promotion or appointment to any permanent office of an officer other than the officer who, according to the rules governing promotion in the service in which those officers are employed, is next in seniority for the promotion or appointment;
- 25 (b) for the reduction in rank, position, grade or pay of the officer;
- (c) for the dismissal of the officer;
- (d) for the imposition of a fine or forfeiture of pay in respect of any offence of which the officer is held to be guilty;
- 30 (e) that the officer is required to resign.

(2) A decision or determination of the nature referred to in subsection one of this section shall not be carried into effect until the expiration of the time for lodging

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lodging an appeal under this Act, and, if an appeal is lodged within that time, shall not be carried into effect until the appeal is determined.

(3) Where under any law or any award or industrial agreement (whether enacted or made before or after the commencement of this Part) an officer has a right of appeal to any tribunal or authority (including the employer or other the person in whose service he is employed) against any decision or determination of the nature referred to in subsection one of this section, he may exercise either that right of appeal or the right of appeal conferred by subsection one of this section.

Where the officer lodges an appeal under such law, award, or industrial agreement no appeal shall lie under this section, and where the officer lodges an appeal under this section no appeal shall lie under such law, award or industrial agreement.

**11.** (1) Every appeal to the Board shall be initiated by notice in writing lodged with the Secretary. Notice of appeal.

(2) Every such notice shall be in the prescribed form, and shall be lodged in quadruplicate with the Secretary within thirty days after the appellant has been notified of the decision or determination appealed against.

(3) Upon receipt of such notice the Secretary shall forward one copy to the employer in whose service the appellant is employed and shall notify the chairman.

The chairman shall arrange a sitting of the Board and shall fix the date and place for the hearing of the appeal, and shall cause notice thereof to be given to the employers' representative and the officers' representative.

The Secretary shall give to the appellant and the employer not less than seven days' notice of the date and place so fixed.

**12.** (1) For the purpose of hearing and determining any appeal under this Act the Board and the chairman of the Board shall have the powers, authorities, protections and immunities conferred on commissioners and the chairman of a commission respectively by Division 1 of Part II of the Royal Commissions Act, 1923, as amended by subsequent Acts. Hearing of appeals.

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The provisions of the Royal Commissions Act, 1923, as amended by subsequent Acts, with the exception of section thirteen and Division 2 of Part II shall, mutatis mutandis, apply to and in respect of any such appeal and  
5 to any witness or person summoned by or appearing before the Board.

(2) The decisions of the Board shall be upon the real merits and justice of the case and it shall not be bound to follow strict legal precedent.

10 (3) The appellant may be represented before the Board by a barrister, solicitor or agent.

(4) The employer shall be entitled to be represented before the Board and may be so represented by a barrister or solicitor or by an officer.

15 **13.** (1) The decision of the Board on any appeal under this Act shall be final and shall be given effect to by the employer or other person in whose service the appellant is employed. Decision of Board to be final.

20 (2) No decision or proceeding of the Board shall be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature on any account whatsoever. cf. Act No. 2, 1940, s. 84 (2).

25 (3) No writ of prohibition or certiorari shall lie in respect of any decision of the Board relating to any appeal under this Act.

PART IV.

REGULATIONS.

30 **14.** (1) 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.

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(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations;
- 5 (c) be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution, of which notice has been given, at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof such regulation or part shall thereupon cease to have effect.

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PART V.

AMENDMENT OF POLICE REGULATION (APPEALS) ACT, 1923.

**15.** (1) The Police Regulation (Appeals) Act, 1923, as amended by subsequent Acts, is amended—

- 20 (a) by omitting section seven and by inserting in lieu thereof the following section:—
7. The decision of the Board on any appeal shall be final and shall be carried into effect by the Commissioner.
- 25 (b) by omitting from section eight the words “either of the Appeal Board or of the Minister” and by inserting in lieu thereof the words “of the Appeal Board”.

(2) The Police Regulation (Appeals) Act, 1923, as amended by subsequent Acts and by this Act, may be

30 cited as the Police Regulation (Appeals) Act, 1923-1943.

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SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

- Public Service Association of New South Wales. ‘  
Public Service Professional Officers Association of New South  
5 Wales.  
Public School Teachers' Federation of New South Wales.  
The Amalgamated Hospitals, Homes and Laboratories Employees'  
Association of New South Wales.  
The Trained Mental Nurses Association of New South Wales.  
10 New South Wales Dredge and Maritime Services Board Employees'  
Association.  
Fire Brigades Association of New South Wales.  
Fire Brigades Officers' Association, New South Wales.  
Maritime Services Board of New South Wales Clerical and General  
15 Officers' Association.  
The Hunter District Water Board Employees' Association.  
The Metropolitan Board of Water Supply and Sewerage Employees'  
Association.  
The Institute of Inspectors of Schools of New South Wales.

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SECOND SCHEDULE.

- The Metropolitan Water, Sewerage and Drainage Board.  
The Hunter District Water Board.  
The Water Conservation and Irrigation Commission.  
The Milk Board.  
25 The Board of Fire Commissioners of New South Wales.  
The Commissioner for Main Roads.  
The Maritime Services Board of New South Wales.  
The Metropolitan Meat Industry Commissioner.  
The Comptroller-General of Prisons.  
30 The Inspector-General appointed under the Lunacy Act of 1898,  
as amended by subsequent Acts.
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