

**TASMANIA**

---

**POLICE REGULATION AMENDMENT (PROMOTION  
APPEALS) ACT 1995**

---

**No. 91 of 1995**

---

**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Principal Act
4. Section 5 amended (Interpretation)
5. Part IVA substituted
  - Part IVA—Police Promotions Appeal Board
  - 49A—Police Promotions Appeal Board
  - 49B—Member not to hear appeal
  - 49C—Deputy members
  - 49D—General functions and powers of Board
  - 49E—Secretarial and administrative support
  - 49F—Notice of intention to appoint
  - 49G—Lodging of appeals
  - 49H—Grounds of appeal
  - 49I—Case for appeal
  - 49J—Hearing of appeals
  - 49K—Attendance at appeal
  - 49L—Board may summon witnesses
  - 49M—Remuneration of witnesses
  - 49N—Determination of appeals
  - 49O—Date of appointment after appeal
  - 49P—Making of appointment

6. Schedules 3 and 4 inserted  
    Schedule 3—Membership of Board  
    Schedule 4—Meetings of Board



**POLICE REGULATION AMENDMENT (PROMOTION  
APPEALS) ACT 1995**

---

**No. 91 of 1995**

---

**AN ACT to amend the *Police Regulation Act 1898***

**[Royal Assent 24 November 1995]**

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**Short title**

1—This Act may be cited as the *Police Regulation Amendment (Promotion Appeals) Act 1995*.

**Commencement**

2—This Act commences on a day to be proclaimed.

**Principal Act**

3—In this Act, the *Police Regulation Act 1898\** is referred to as the Principal Act.

**Section 5 amended (Interpretation)**

4—Section 5 of the Principal Act is amended as follows:—

(a) by inserting before the definition of “cadet” the following definitions:—

“**Association**” means the Police Association of Tasmania;

“**Board**” means the Police Promotions Appeal Board established under Part IVA;

(b) by inserting after the definition of “cadet” the following definition:—

“**chairperson**” means the chairperson of the Board;

**Part IVA substituted**

5—Part IVA of the Principal Act is omitted and the following Part is substituted:—

**PART IVA****POLICE PROMOTIONS APPEAL BOARD****Police Promotions Appeal Board**

49A—(1) The Police Promotions Appeal Board is established.

(2) The Board consists of 3 members appointed by the Minister of whom—

(a) one is the chairperson; and

---

\* 62 Vict. No. 48. For this Act, as amended to 1959, see the Reprint of Statutes 1826–1959, Vol. 4, p. 715. Subsequently amended by No. 9 of 1960, Nos. 21, 23 and 88 of 1963, No. 55 of 1965, No. 92 of 1971, Nos. 50 and 75 of 1973, No. 82 of 1974, No. 2 of 1975, No. 87 of 1976, No. 33 of 1977, No. 53 of 1981, No. 78 of 1983, Nos. 20 and 29 of 1984, Nos. 23 and 51 of 1985, No. 84 of 1986, No. 100 of 1987, No. 5 of 1988, No. 59 of 1989, No. 5 of 1990, No. 46 of 1991, Nos. 39, 67 and 85 of 1994 and No. 71 of 1995.

- (b) one is a police officer selected from a list of 3 police officers nominated by the Association; and
- (c) one is a person with the appropriate skills and experience.

(3) The Minister may appoint a suitable person without a nomination if a nomination is not made under subsection (2) (b) within 30 days after the Minister requires.

(4) Schedule 3 has effect in respect of membership of the Board.

(5) Schedule 4 has effect in respect of meetings of the Board.

#### **Member not to hear appeal**

49B—(1) A member of the Board must not hear an appeal if the Minister is of the opinion that for the member to do so may prejudice the hearing on the basis of a conflict of interest, bias or similar basis.

(2) A member prevented from hearing an appeal is taken to be temporarily absent.

#### **Deputy members**

49C—(1) The Minister may appoint a suitable person to be the deputy of a member of the Board in that member's temporary absence.

(2) A deputy member may act as a member of the Board and while so acting has the same powers and functions as the member for whom he or she is the deputy.

- (3) In any proceedings, proof is not required of—
- (a) the circumstances in which a person is appointed as a deputy member; or
  - (b) the appointment of a deputy member.

#### **General functions and powers of Board**

49D—(1) The Board is to hear and determine appeals under this Part.

(2) The Board has power to do all things necessary or convenient to perform its functions.

### **Secretarial and administrative support**

49E—The Secretary of the responsible Department in relation to the *Justices Act 1959* is to provide to the Board secretarial and administrative assistance in relation to the hearing and determination of an appeal under this Part.

### **Notice of intention to appoint**

49F—(1) If the Governor or Commissioner intends to appoint a police officer to a position of a prescribed rank, a notice of that intention is to be published in the *Police Gazette*.

(2) A notice of intention is to be published by—

- (a) the Minister, if an intended appointment is to a rank referred to in section 10; or
- (b) the Commissioner, in any other case.

### **Lodging of appeals**

49G—(1) A police officer who applies for a position of a prescribed rank may appeal to the Board against the intended appointment of another police officer to that position if the appointment would be a promotion for that other officer.

(2) A notice of appeal is to be—

- (a) in writing; and
- (b) lodged with the Board within 14 days of the publication of a notice under section 49F (1).

(3) The Board may require any document or record in support of the appeal to be lodged.

(4) Any document or record must be lodged with the Board within 7 days of lodging the notice of appeal.

(5) An appeal lapses if any document or record is not lodged within 7 days of lodging the notice of appeal.

(6) The Board is to notify the Minister or Commissioner if an appeal is not lodged or lapses.

### **Grounds of appeal**

49H—(1) An appeal in relation to an appointment to a position of a prescribed rank may be made on either or both of the following grounds:—

- (a) that the appellant believes he or she is more entitled to appointment to the position than the person intended to be appointed on the basis of superior merit and good conduct;
- (b) that there has been an irregularity in the selection process.

(2) For the purposes of an appeal, merit is the capacity of a person to perform the work associated with a particular position having regard to—

- (a) the knowledge, skills, qualifications and experience of the person; and
- (b) the person's potential for future development in that rank and position.

### **Case for appeal**

49I—(1) On receiving a notice of appeal, the Board is to examine the notice and any associated documents or records to determine whether or not a case for the appeal may exist.

(2) The Board may dismiss the appeal if satisfied that a case for the appeal does not exist.

### **Hearing of appeals**

49J—(1) The Board is to hear and determine an appeal in accordance with this Part.

(2) The hearing of an appeal by the Board is to be conducted with as little formality and technicality, and with as much expedition, as this Part and a proper consideration of the matter permit.

(3) The rules of evidence do not apply to a hearing by the Board and the Board may be informed on any matter in any way it considers appropriate.

(4) The Board must observe the rules of natural justice.

(5) Subject to this Part, the Board may regulate its own proceedings.

### **Attendance at appeal**

49K—On the hearing of an appeal under this Part, the Commissioner is to make available to the Board any one or all of the following persons:—

- (a) the chairperson of the selection panel or, subject to the approval of the Board, a member of the selection panel;
- (b) the person it is intended to appoint to the position;
- (c) the appellant;
- (d) any witnesses summoned by the Board.

### **Board may summon witnesses**

49L—(1) A party to an appeal may request the Board to summon a person to attend the proceedings as a witness.

(2) The Board may summon a person to be a witness or to produce any document or record relevant to the proceedings by serving on the person a notice in writing requiring that person to attend the proceedings to—

- (a) give evidence; or
- (b) produce the documents or records.

(3) The notice is to specify the following:—

- (a) the name of the person on whom it is served;
- (b) the time and place at which the person is required to attend;
- (c) any document or record the Board requires to be produced at the proceedings;
- (d) any other matter the Board determines.



(4) A person summoned by the Board to attend the proceedings must not—

- (a) fail to attend the proceedings; or
- (b) refuse to be sworn; or
- (c) refuse to answer any question put by the Board; or
- (d) fail to produce any document or record specified in the notice.

Penalty: Fine not exceeding 5 penalty units.

### Remuneration of witnesses

49M—(1) A witness who is not a member of the police force and is summoned to attend proceedings before the Board on the hearing of an appeal is entitled to be paid an allowance for travelling expenses and maintenance during any absence from his or her usual place of residence in accordance with the scale of allowances to witnesses specified in—

- (a) Appendix M to Part I of the *Rules of the Supreme Court 1965*; or
- (b) Part II of the appendix to the Rules of Court made under the *Criminal Code Act 1924*.

(2) The appellant and any other member of the police force summoned to attend proceedings before the Board on the hearing of an appeal are entitled to be paid travelling expenses and maintenance during any absence from his or her usual place of work at the rates prescribed in the Police Award.

### Determination of appeals

49N—(1) In determining an appeal under this Part, the Board may—

- (a) dismiss the appeal; or
- (b) in respect of an appeal under section 49H (1) (a), uphold the appeal and direct that the appellant be appointed to the position and, if applicable, the prescribed rank; or

(c) in respect of an appeal under section 49H (1) (b), uphold the appeal and direct that the Commissioner take any action, other than appointment of the appellant, the Board considers necessary.

(2) The decision of the Board is final.

(3) The Board is to notify its decision in writing to—

(a) every party to the appeal; and

(b) the Minister or the Commissioner.

#### **Date of appointment after appeal**

49O—If the Board upholds an appeal under section 49N, the appointment of the appellant to the position and, if applicable, the prescribed rank takes effect on the date of the notification of the Board's decision.

#### **Making of appointment**

49P—(1) The Governor or the Commissioner may make the intended appointment if—

(a) all appeals under this Part in respect of the intended appointment are dismissed; or

(b) an appeal is not made within the period specified in section 49G (2) (b).

(2) An appointment takes effect on the fifteenth day after the date of publication of a notice under section 49F (2).

#### **Schedules 3 and 4 inserted**

6—After Schedule 2 to the Principal Act the following Schedules are inserted:—

#### **SCHEDULE 3**

Section 49A (4)

#### **MEMBERSHIP OF BOARD**

#### **Interpretation**

1—In this Schedule, “member” means a member of the Board.

**Term of office**

2—A member is to be appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment.

**Holding other office**

3—The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from—

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

**Remuneration of members**

4—A member is entitled to be paid such remuneration, allowances and expenses as the Minister determines.

**Vacation of office**

5—(1) A member vacates office if the member—

- (a) dies; or
- (b) resigns; or
- (c) is removed from office under subclause (2) or (3).

(2) The Minister may remove a member from office if the member—

- (a) is absent from 3 consecutive meetings of the Board without the permission of the Board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration or estate for their benefit; or
- (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
- (d) is convicted of an offence against this Act or the *Tasmanian State Service Act 1984*.

(3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.

### **Filling of vacancies**

6—(1) If the office of the member referred to in section 49A (1) (b) becomes vacant, the Minister may appoint a person selected from nominations received under that paragraph to the vacant office for the remainder of that member's term of office.

(2) If the office of a member referred to in section 49A (1) (a) or (c) becomes vacant, the Minister may appoint a suitable person to the vacant office for the remainder of that member's term of office.

---

## **SCHEDULE 4**

Section 49A (5)

### **MEETINGS OF BOARD**

#### **Interpretation**

1—In this Schedule—

“meeting” means a meeting of the Board;

“member” means a member of the Board.

#### **Convening of meetings**

2—The chairperson may convene a meeting at any time.

#### **Procedure at meetings**

3—(1) The quorum at any duly convened meeting is 3 members.

(2) Any duly convened meeting at which a quorum is present is competent to transact any business of the Board.