

## REGULATIONS UNDER THE MEL- BOURNE AND METROPOLITAN TRAMWAYS ACT 1928 (No. 3732).

### APPEAL BOARD.

*At the Executive Council Chamber, Melbourne, the 29th  
day of January, 1935.*

#### PRESENT:

His Excellency the Governor of Victoria.

Sir Stanley Argyle  
Mr. Allan

Mr. Pennington.  
Mr. Chandler.

**W**HEREAS by sections 17 (5) (e) and 112 of the *Melbourne and Metropolitan Tramways Act 1928* (No. 3732), it is enacted that the Governor in Council may make Regulations prescribing all such things that are necessary or convenient to be prescribed as to the appointment of members of the Appeal Board by the Melbourne and Metropolitan Tramways Board, and by its officers, servants, and employees, and for the execution of any matter or thing consistent with and not expressly provided for in the said Act, and for more fully carrying out the objects and purposes of the said Act: Now therefore His Excellency the Governor of the State of Victoria, by and with the advice of the Executive Council thereof, doth hereby make the Regulations following (that is to say):—

#### INTERPRETATION.

1. In these Regulations, unless inconsistent with the context or subject-matter—

“Appeal Board” means the Appeal Board constituted under section 17 (5) (a) of the *Melbourne and Metropolitan Tramways Act 1928* (No. 3732).

“Chairman” means Chairman of the Appeal Board, and includes any acting Chairman while so acting.  
 “Minister” means the Minister of Public Works.  
 “Member” means a member of the Appeal Board, and includes any acting member while so acting.  
 “Tramways Board” means the Melbourne and Metropolitan Tramways Board.  
 “Employees” means officers, servants, and employees  
 “Registrar” means the Registrar of the Appeal Board, regularly employed upon salary or wages by the Melbourne and Metropolitan Tramways Board in connexion with its tramway undertaking. “Employee” means any of such officers, servants, and employees, and “regularly employed” means employed week after week consecutively for a period of one month or more.

#### REGISTRAR.

2. The Registrar shall be a person appointed by the Minister of Public Works.

#### MEMBERS OF BOARD.

3. The Appeal Board as constituted shall consist of one representative to be appointed by the Tramways Board, one representative to be appointed by the employees of the said Tramways Board, and one, who shall be the Chairman, to be appointed by the Governor in Council.

#### LIMITATION OF APPEALS.

4. Subject to any award or industrial agreement referred to in section 17 of above Act, the Appeal Board shall hear and determine:—

- (i) All appeals by officers, servants, and employees of the Melbourne and Metropolitan Tramways Board against dismissals, fines, deductions from wages, reductions in rank, grade, or pay, or other punishments inflicted by the last-mentioned Board (other than suspension for only one day, or the loss of only one day's pay, or the deprivation of only two days' good-conduct holidays, as to any of which punishments there shall be no appeal), and in its determination the Appeal Board may confirm, quash, or vary (whether by increasing or decreasing any

such punishment, or otherwise, as it thinks fit), any decision by such last-mentioned Board in respect of which such an appeal is made; and

- (ii) all appeals by such officers, servants, and employees on the ground of promotions being unreasonably withheld, and in its determination the Appeal Board may refuse or allow any such appeal, and in the latter case shall refer the matter back to the Melbourne and Metropolitan Tramways Board for reconsideration.

#### APPOINTMENT OF MEMBERS.

5. The members of the Appeal Board (other than the Chairman) shall be appointed in the following manner:—

#### TRAMWAYS BOARD AND EMPLOYEES TO NOMINATE REPRESENTATIVES.

- (a) The Registrar shall, from time to time whenever it may be necessary, as vacancies in the Appeal Board occur, publish concurrently in the *Government Gazette* and in one of the daily newspapers circulating in the city of Melbourne, a notice calling upon the Tramways Board and the employees respectively, within twenty-one days of the publication of such notice, to nominate a person to represent each of them on the Appeal Board.

#### TRAMWAYS BOARD TO EXHIBIT NOTICES.

- (b) The Registrar shall post or deliver to the Tramways Board as many copies of such notices as may be required, with a request that the same shall be forthwith exhibited in a prominent position in each office, car depot, power-house, converter station, car repair shop or factory, and all other places of employment of employees of the Tramways Board.

The neglect or failure of the Tramways Board to comply with such request shall be deemed to be a breach of these Regulations, punishable as hereinafter provided.

#### TRAMWAYS BOARD NOMINEE TO BE A MEMBER.

6. The person nominated by the Tramways Board shall be deemed to have been duly appointed by the Tramways Board as a member of the Appeal Board.

### MODE OF NOMINATION.

7. Any five employees may nominate any other employee to be a member of the Appeal Board. Such nomination shall be signed under their own hands, and by the employee nominated in token of his assent to such nomination.

#### EMPLOYEE TO BE MEMBER WHERE ONLY ONE NOMINATION.

8. If only one employee is so nominated to represent the employees, such person shall be deemed to have been duly appointed by the employees to be a member of the Appeal Board.

#### CHAIRMAN TO BE RETURNING OFFICER.

9. If more than one employee is nominated to represent the employees, the Chairman of the Appeal Board shall be the Returning Officer for the purposes of the election of an employee on the Appeal Board, and he may by writing under his hand appoint a substitute to act for him.

#### POLL CLERKS.

10. The Returning Officer may appoint one or more poll clerks to supervise the taking of the poll at the said election.

#### RETURNING OFFICER OR DEPUTY, ETC., DIVULGING NAME OF CANDIDATE FOR WHOM PERSON MAY HAVE VOTED.

11. Any person who being a Returning Officer, Deputy Returning Officer, or Poll Clerk under the provisions of these Regulations learns or has the means of learning for what candidate any person votes or has voted at any election by word or act, or any other means whatsoever, directly or indirectly, divulges or discovers or aids in divulging or discovering the same, save in answer to some question which he is legally bound to answer, shall be guilty of a breach of these Regulations.

#### LIST OF EMPLOYEES.

12. If more than one employee is nominated to represent the employees the Returning Officer shall require the Tramways Board, within such time as he may think fit, to furnish him with as many certified lists as may be required, arranged in alphabetical order, setting out the surnames and christian names of all employees, and prefix to every name in such lists a number, beginning with such numbers at the first name on

the said lists with the number one, and continuing them on in regular arithmetical series to the last name thereon. The failure of the Tramways Board to furnish such lists, and the wilful or negligent omission of the name of any employee by the Tramways Board or of any of its officers who may be charged with a preparation of such lists, shall be deemed to be a breach of these Regulations by the Tramways Board, and shall be punishable as hereinafter provided.

#### PUBLICATION OF NOMINATIONS.

13. (a) The Returning Officer shall forthwith publish in the *Government Gazette* a notice stating in alphabetical order the surnames and christian names of employees so nominated, and that a poll will be taken and shall commence at 9 o'clock in the forenoon, and close at 6 o'clock in the afternoon, on the day and at the place or places named in such notice, not later than twenty-one (21) days after the last day fixed for receiving nominations.

#### TRAMWAYS BOARD TO EXHIBIT NOTICES AS TO DAY OF ELECTION.

(b) The Returning Officer shall also post or deliver to the Tramways Board at least ten days prior to the day fixed for taking the poll, as many copies of notices as may be required, stating the names of employees nominated, the day and hours between which such poll shall be taken, and the place or places at which employees may vote, with a request that same shall be forthwith exhibited in a prominent position in each office, car depot, power house, converter station, car repair shop or factory, and other places of employment of employees of the Tramways Board.

#### VOTING BY POST.

14. If any employee has reason to believe that on the polling day during the hours of polling he will not be within five (5) miles of the nearest polling place at which he is entitled to vote, or that, on account of ill health he will be prevented from voting personally at any such polling place, such employee shall be entitled to vote by post.

Applications for a postal ballot-paper may be made to the Returning Officer, in writing, signed by the applicant, within seven days prior to the day fixed for taking the poll.

If the Returning Officer is satisfied that the applicant is entitled to vote by post, he shall forthwith post a ballot-paper to the applicant, with necessary instructions as to the return thereof.

No employee to whom a ballot-paper has been posted shall be entitled to vote personally at any poll, unless he previously gives up such postal ballot-paper, in blank form, to the Returning Officer or Deputy at the polling place at which he is entitled to vote.

No postal ballot-paper shall be counted unless received by the Returning Officer before the close of the poll.

#### LIST OF EMPLOYEES NOT TO BE ADDED TO.

15. No additional names shall be added to the lists of employees received by the Returning Officer after the publication of the names of the employees nominated aforesaid.

#### BALLOT-PAPERS.

16. Every ballot-paper shall contain, in alphabetical order, the surnames and christian names of each of the candidates nominated for election.

#### PREFERENTIAL VOTING.

##### *How Votes to be Marked by Voter.*

17. When at any election an employee receives a ballot-paper he shall mark his vote on the ballot-paper by placing the figure 1 opposite the name of the candidate for whom he votes as his first preference, and shall give contingent votes for all the remaining candidates by placing figures 2, 3, 4 (and so on as the case requires) opposite their names, so as to indicate by such numerical sequence the order of his preference.

#### MARKING OF BALLOT-PAPERS WHERE ONLY TWO CANDIDATES.

Notwithstanding anything contained in the last preceding paragraph, at any election where there are only two candidates the requirements as to the marking of ballot-papers by employees shall be deemed to be sufficiently complied with in the case of any ballot-paper marked as aforesaid with the figure 1 so as to indicate the employee's first preference only.

#### INVALID BALLOT-PAPERS.

A ballot-paper shall be rejected at the close of the poll if it does not indicate in the manner required by these Regulations the employee's first preference for one candidate, and in the case of any election where there are more than two candidates, his contingent votes for all the remaining candidates.

#### PROCEDURE TO ASCERTAIN NUMBER OF VOTES POLLED.

(a) Immediately upon the close of the poll, the Returning Officer shall, in the presence and subject to the inspection of such of the scrutineers as choose to be present, and the poll clerk (if any), and of no other person—

- (i) open each ballot-box;
- (ii) arrange the ballot-papers by placing in a separate parcel all those on which first preference is indicated for the same candidate.
- (iii) count all such first preference votes given for each candidate respectively;
- (iv) make and keep a record of the number of votes counted from each ballot-box; and
- (v) abstain himself from inspecting the writing upon the back of the ballot-paper, and take care that the same is not seen by any person.

#### WHERE RESULTS ASCERTAINED ON FIRST COUNT.

(b) The candidate who has received the greatest number of first preference votes, if such number constitutes an absolute majority of votes (including the casting vote of the Returning Officer, if necessary), shall by the Returning Officer be declared duly elected.

#### DECLARATION AS TO DEFEATED CANDIDATE AND FIRST DISTRIBUTION OF PREFERENCES.

(c) If at an election where there are more than two candidates no candidate has an absolute majority of votes, the Returning Officer with the assistance of such officers as he deems necessary shall, in the presence and subject to the inspection of such of the scrutineers as choose to be present, and the poll clerk (if any), but of no other person, shall declare the candidate who has obtained the fewest first preference votes to be a defeated candidate; and the ballot-papers counted to such defeated candidate shall be distributed amongst the non-defeated candidates next in order of the voter's preference.

After such distribution the number of votes given to each non-defeated candidate shall again be ascertained.

#### FURTHER DECLARATIONS AND DISTRIBUTIONS OF PREFERENCES.

(d) If no candidate then has an absolute majority of votes (including the casting vote of the Returning Officer), the process of declaring the candidate who has the fewest votes to be defeated, and distributing his ballot-papers among the non-defeated candidates next in order of the voter's preference shall be repeated, and the votes recounted after every such redistribution until one candidate has obtained an absolute majority of votes (including the casting vote of the Returning Officer, if necessary), and such candidate shall be declared duly elected.

#### PROVISION FOR EQUALITY OF VOTES AND CASTING VOTE.

(e) If on any count two or more candidates have an equal number of votes, and one of them has to be declared defeated, the Returning Officer shall decide which is to be declared defeated, and if on the final count two candidates have received an equal number of votes, the Returning Officer shall in such case have the casting vote, but, except as provided in paragraphs (b) and (d) and in this paragraph, shall not vote at such election.

#### ADJOURNMENT OF COUNT OF VOTES.

(1) If on the date of the polling at any election the count of the votes by the Returning Officer cannot be completed, he shall adjourn such count and inform the scrutineers and the officers appointed to assist him at such count as regards the time and place, when, and where such count will be continued and conducted by him.

(2) The count of the votes may from time to time be adjourned as the Returning Officer deems necessary until it has duly been completed, and each adjournment shall be announced by the Returning Officer to the scrutineers and the officers assisting him.

#### BEFORE ADJOURNMENT BALLOT-PAPERS, ETC., TO BE SEALED IN THE BALLOT-BOXES.

(3) Before every adjournment of the count of the votes—

(a) all ballot-papers and other documents connected with such count shall be placed in one or more ballot-boxes; and

(b) the Returning Officer shall then, in the presence of such scrutineers and officers as are present seal such ballot box or boxes, and before recommencing the count the seal on such ballot box or boxes shall be exhibited, unbroken, to such of the scrutineers and officers as are present.

#### COUNTING VOTES.

18. The Returning Officer shall, as soon as practicable after the hour fixed for closing the poll, count the votes received, and, after ascertaining the result of the poll, report to the Minister the name of the candidate declared elected.

#### DESTRUCTION OF BALLOT-PAPERS.

19. At the conclusion of the count of votes, the Returning Officer shall cause all ballot-papers, applications for postal ballot-papers, and lists of employees used at such election to be sealed in a packet, endorsed with a description of the contents thereof, signed by the Returning Officer, and secretly and safely kept for six months.

The Returning Officer shall, after the expiration of such period, cause such ballot-papers, applications for postal ballot-papers, and lists of employees to be destroyed in the presence of the Registrar.

#### WHEN RULES, ETC., AT PARLIAMENTARY ELECTIONS APPLY.

20. In all cases not herein provided for, the rules and usages at Parliamentary elections shall be followed so far as they may be applicable.

#### EXPENSES OF ELECTION.

21. All expenses incurred by the Returning Officer shall be borne and paid for by the Tramways Board.

#### EMPLOYEE ELECTED TO BE DEEMED APPOINTED.

22. If more than one employee has been nominated to represent the employees, the employee elected as herein provided shall be deemed to have been duly appointed by the employees.

#### TERM OF OFFICE.

23. The members of the Appeal Board (other than the Chairman) shall hold office for a period of three years from the date of their appointment, and shall be eligible for re-appointment.

## CASUAL VACANCIES.

24. If any member appointed either by the Tramways Board or employees—

- (a) dies, resigns, is an undischarged bankrupt or insolvent, becomes bankrupt or insolvent, or is convicted of any felony, misdemeanour, or crime, or is of unsound mind, or is an alien; or
- (b) is proved to be guilty of inciting any industrial union or employee to commit any breach of an industrial agreement or award; or
- (c) is absent from three consecutive meetings of the Appeal Board,

his office shall in any such case become vacant, and the vacancy thereby caused shall be deemed to be a casual vacancy.

## FILLING CASUAL VACANCY.

25. Every casual vacancy shall be filled by the same appointing authority, and as far as practicable in the same manner and subject to the same provisions as in the case of the vacating member, and the person so appointed shall hold office for the residue of the term of the vacating member. Upon any casual vacancy being reported to the Registrar, he shall take such action as may be necessary, in terms of clause 5 hereof, to procure the appointment of another member to fill such vacancy.

## QUORUM OF BOARD.

26. The presence of the Chairman and of at least one of the other members of the Appeal Board shall be necessary to constitute a quorum at every meeting of the Board.

## DECISION OF QUESTIONS AT MEETINGS OF BOARD.

27. In all matters coming before the Appeal Board, the decision of the Appeal Board shall be determined by a majority of the votes of the members present, except in the case of an equality of votes, in which case the Chairman shall have a casting vote. The determination of the Board in every case shall be binding upon the Tramways Board and every appellant, and may be enforced in any court of competent jurisdiction.

## VACANCIES, INFORMALITIES, ETC., NOT TO VOID DECISIONS.

28. Subject to the last two preceding clauses, the Appeal Board may act notwithstanding any vacancy in its body, and in no case shall any act of the Appeal Board be questioned on the grounds of any informality in the appointment of a member, or on the ground that the seat of any member is vacant, or that any supposed member is incapable of being or continuing a member.

## GOVERNOR IN COUNCIL MAY APPOINT CHAIRMAN OR MEMBER.

29. In the case of the illness or unavoidable absence of the Chairman of the Appeal Board for a period of twenty-one days or upwards, the Governor in Council shall appoint some other fit person to act as Chairman during such illness or absence, and in the case of the illness or unavoidable absence of either of the other members of the Appeal Board, or disqualification by personal interest in the appeal under consideration, or in the subject matter thereof, or being a witness, or in the event of the Tramways Board or employees neglecting or failing to appoint a member of the Appeal Board, the Governor in Council may in such case temporarily appoint some suitable person to act as a member of the Appeal Board during the illness or absence or disqualification of such member as aforesaid, or until such time as the Tramways Board or employees appoint such member; and the person so appointed shall, while acting upon the Appeal Board, have all the powers of a member duly appointed by the Tramways Board or employees.

## EVIDENCE.

30. The Appeal Board may in its discretion accept or reject any evidence, and may also permit the Tramways Board or appellant to be represented by solicitor, counsel, or agent. All evidence shall be on oath, or in such other manner as is permitted by law.

## RIGHT OF PERSONS TO BE PRESENT DURING APPEAL.

31. No person other than the parties to the appeal then being heard, and their representatives, shall have the right to be present during the proceedings of the Appeal Board except with the consent and approval of the Appeal Board or a majority thereof.

## REGISTRAR'S DUTIES.

32. It shall be the duty of the Registrar—

- (a) To receive, register, and perform all administrative acts in connexion with all appeals.
- (b) To convene the Appeal Board for the purpose of dealing with such appeals by giving three days' notice, in writing, to each member, the Tramways Board, and the appellant, of the intention to hold such meeting, and the time and place thereof.

- (c) To keep a register, in which shall be entered the particulars of such appeals, and the determination of the Appeal Board thereon. Such register shall at all times be open to the perusal of any member of the Appeal Board, and of the Minister, or of such person as he may appoint, or of the Tramways Board, or of any employee of the said Board.
- (d) To obtain the signature of the Chairman to all entries in such register in proof of their correctness.
- (e) To forward a true copy of any determination (certified by him as such true copy) of the Appeal Board, thereon to the appellant, to the Tramways Board, and to the Minister respectively, and in addition to forward to the Minister particulars of the matter appealed against.
- (f) To issue all summonses to witnesses and notices, and perform all other acts in connexion with the sittings of the Board as the Chairman directs.
- (g) To deliver to members certificates of their attendance.

#### TIME AND PLACE FOR HEARING APPEALS.

33. Appeals shall be heard at such convenient times and places as the Chairman may from time to time determine. Every appeal shall come on for hearing as soon as practicable after the date on which notice thereof shall have been given to the Registrar.

#### PROCEDURE FOR APPEALS.

34. With respect of every appeal, the following provisions shall apply:—

- (a) Every appeal shall be commenced by notice of appeal addressed to the Chairman of the Appeal Board, c/o the Registrar, Old Treasury Buildings, Spring-street, Melbourne.
- (b) Such notice of appeal against any dismissal, fine, deduction from wages, reduction in rank, grade, or pay, or other punishment inflicted by the Tramways Board, or on the ground of promotion having been unreasonably withheld, shall not be considered unless the appellant give notice in accordance with these Regulations within twenty-one days from the happening of such events.
- (c) Such notice may be in the form of an ordinary letter, and shall set forth clearly the grounds of appeal, and the date or dates when the subject-matter of

- such appeal arose. Such appeal must in every case be a matter personally affecting the appellant himself. Copies of the correspondence or other documents, if any, or statements of fact relating to the dispute shall be attached to the notice of appeal.
- (d) A copy of the notice of appeal, together with a copy of the correspondence or other documents as mentioned in the last sub-clause, shall be served on the Tramways Board by the appellant.
  - (e) The Appeal Board may decline to hear an appeal which does not comply with the foregoing conditions, or which it considers to be frivolous or irrelevant, but if satisfied that the failure to comply with such conditions is not due to the wilful neglect of the appellant, the Appeal Board may hear the appeal, notwithstanding such failure.

35. In every case the appellant shall (unless the facts are admitted by the Tramways Board) begin by tendering evidence in support of the subject matter of his appeal. The burden of proof shall then rest upon the Tramways Board, at the conclusion of whose case the appellant may tender evidence in rebuttal of the case for the Tramways Board.

36. The provisions of sections 14, 15, and 16 of the Evidence Act shall apply as if the Appeal Board had been expressly mentioned therein.

37. On the hearing of any appeal, the Appeal Board may adjourn the consideration thereof, if it is of opinion that it is desirable so to do.

38. Subject to the provisions of these Regulations the Board may regulate its own procedure.

#### CERTIFIED EXTRACTS.

39. Every document purporting to be an extract from the register mentioned in clause 34 certified by the Registrar to be a true copy, shall be prima facie evidence of the matters entered therein, and every document purporting to be such an extract shall be taken to be such extract, and so certified unless the contrary is made to appear.

#### EXPENSES OF REGISTRAR.

40. All expenses incurred by the Registrar in carrying out his duties under these Regulations shall be paid and borne by the Tramways Board, and such Registrar shall receive such remuneration for his services as the Minister shall from time to time determine.

## PENALTIES.

41. Breaches of these Regulations may be punishable by a fine not exceeding £20 recoverable by the Registrar for and in the name of the Minister of Public Works before a Court of Petty Sessions.

## DISPUTES.

42. In the event of any dispute or question arising as to the meaning of these Regulations, or any portion thereof, the same shall be referred to the Minister for determination, and his decision shall be final and conclusive, but all questions as to matters of form or admissibility of evidence, and all other questions arising out of or in connexion with any appeal, shall be decided by the Appeal Board.

REGULATIONS PRESCRIBING THE FORM OF BALLOT-PAPER AND THE FORM FOR RECORDING THE DISTRIBUTION OF PREFERENTIAL VOTES.

43. For the purposes of giving effect to the foregoing Regulations, the Governor in Council doth make the Regulations following, prescribing the form of ballot-paper and the form for recording the distribution of preferential votes:

## FORM A.

## FORM OF BALLOT-PAPER.

*Election of Employee on Tramway Appeal Board.*

Candidates' names (arranged in alphabetical order of surnames) thus—

- BROWN, ALFRED.  
 JONES, ROBERT WILLIAM.  
 ROBINSON, SAMUEL JAMES.  
 SMITH, JOHN.

*Directions.*

You must *not strike out* the name of any candidate.

You must place the figure 1 opposite the name of the candidate whom you wish to be elected.

You must then place opposite the name of each of the remaining candidates the figure 2 or 3 or 4 (and so on as the case requires) to indicate the order of your preference for each such candidate.

The ballot-paper so marked by or for the voter must be dropped by you into the ballot-box.

You must not take this ballot-paper out of the polling booth.

## FORM B.

## PREFERENTIAL VOTING.

*Record of Distribution of Preference Votes.*

Total valid first preference votes polled at election by all candidates..... Number required to constitute an absolute majority.....

—	Votes given to each Candidate.					Totals.
First count—First preference votes .. .. .						*
Distribution of ballot-papers of , the first defeated Candidate ..						†
Totals after first distribution						*
Distribution of ballot-papers of , the second defeated Candidate ..						†
Totals after second distribution						*
Distribution of ballot-papers of , the third defeated Candidate ..						†
Totals after third distribution						*
Distribution of ballot-papers of , the fourth defeated Candidate ..						†
Final count .. .. .						*

\* This number should agree in each case with the total valid first preference votes of all candidates.

† This number should agree with the total votes distributed of the defeated candidate in each case, including those (if any) transferred from a former defeated candidate.

Returning Officer.

And the Honorable John Percy Jones, His Majesty's Commissioner of Public Works for the State of Victoria, shall give the necessary directions herein accordingly.

C. W. KINSMAN,  
Clerk of the Executive Council.



