

REPORT

and

DETERMINATION

under

SECTION 240

of the

STATUTORY AND OTHER OFFICES REMUNERATION ACT 1975

**PUBLIC SERVICE SENIOR EXECUTIVES
EMPLOYED UNDER THE
*GOVERNMENT SECTOR EMPLOYMENT ACT 2013***

11 July 2014

[NSW Remuneration Tribunals website](#)

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Section 1

Background

1. The *Government Sector Employment Act 2013* (the GSE Act) commenced on 24 February 2014. The GSE Act introduced a new structure and employment arrangements for senior executives. Senior executives employed under the GSE Act are referred to as Public Service Senior Executives (PSSEs).
2. Upon commencement, the GSE Act amended the *Statutory and Other Offices Remuneration Act 1975* (SOOR Act) to provide for the Statutory and Other Offices Remuneration Tribunal (the Tribunal) to determine annual remuneration packages for the PSSEs.
3. Under section 35 of the GSE Act the Premier (as the Minister administering the GSE Act) determines the bands in which senior executives are to be employed:

35 Minister may determine bands in which senior executives to be employed

- (1) *The Minister may from time to time determine the bands in which Public Service senior executives are to be employed (the **senior executive bands determination**).*
 - (2) *The senior executive bands determination may deal with matters related to bands.*
 - (3) *The Minister may amend or repeal the senior executive bands determination by a further determination.*
 - (4) *Before making, amending or repealing the senior executive bands determination, the Minister is to obtain the advice of the Commissioner.*
 - (5) *The senior executive bands determination (including any amendment or repeal) is to be published on the NSW legislation website and takes effect on the date it is so published or on any later specified date.*
4. The SOOR Act provides for the Tribunal to make the initial and then annual determinations in respect of the remuneration package applicable to each band. The Tribunal's Initial Determination on the remuneration packages applicable to each band

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was made on 3 February 2014. The Initial determination covered the period from the commencement of the GSE Act being 24 February 2014 to 30 June 2014.

5. The SOOR Act was also amended to provide for the Tribunal's determinations to take effect from 1 July in that year, instead of 1 October. The SOOR Act provides for the annual determinations of Part 3B remuneration packages for PSSEs in the following terms:

24O Annual determinations

The Tribunal is required to make, in each year, a determination of remuneration packages for senior executives as on and from 1 July in that year.

6. On that basis this annual determination will take effect from 1 July 2014.

Section 2

Initial Determination

7. In December 2013 the former Premier wrote to the Tribunal advising that a draft band determination had been made and requested that the Tribunal make an initial determination of remuneration packages for PSSEs.
8. In accordance with Part 3B of the SOOR Act, section 24N (Initial Determinations), the Tribunal is required to make an initial determination of the remuneration package in respect of a band in which PSSEs may be employed under the GSE Act, when notified to the Tribunal by the Premier:

24N Initial determinations

(6) The Tribunal is required to make, as soon as practicable after the commencement of this Part, a determination of the remuneration package for each band in which senior executives may be employed under the Government Sector Employment Act 2013.

(7) The Tribunal may make a determination under this section in respect of a prospective band in which senior executives may be employed that is notified to the Tribunal by the Minister.

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9. Part 3B, section 24V(1)(a) of the SOOR Act (Operation of determinations) provides that the initial determination of the Tribunal comes into force when it is made. However Section 26 of the *Interpretation Act 1987* operates to empower the Tribunal to make the initial determination prior to commencement of the GSE Act, and prevents the determination having effect prior to the commencement of the GSE Act.
10. Section 26 of the *Interpretation Act 1987* enabled the Premier to determine the senior executive bands and the Tribunal to determine the remuneration for each band, before the GSE Act and its amendments to the SOOR Act commenced.

26 Exercise of certain powers between enactment and commencement of Acts and making and commencement of instruments

- (1) *If an Act (in this section referred to as the Act concerned) that does not commence on its enactment would, had it commenced:*
 - (a) *confer a power, or*
 - (b) *amend some other Act in such a manner that the other Act, as amended, would confer a power, that must or may be exercised by the making of an instrument of a legislative or administrative character, then:*
 - (c) *such an instrument may be made, and*
 - (d) *any thing may be done for the purpose of enabling such an instrument to be made or of bringing such an instrument into effect, before the Act concerned commences, as if the Act concerned had commenced.*
- (2) *A provision of an instrument made by virtue of subsection (1) shall take effect:*
 - (a) *on the day on which the Act concerned commences, or*
 - (b) *on the day on which the provision would have taken effect had the Act concerned commenced when the instrument was made, whichever is the later.*

11. On that basis prior to the commencement of the amendments to the SOOR Act the Tribunal proceeded to make the initial determination, which, as with the Premier's band determination, would take effect following commencement of the GSE Act on 24 February 2014.
12. The Government Sector Employment (Senior Executive Bands) Determination 2014, made under section 35 of the GSE Act, determined the remuneration bands in which PSSEs are to be employed as follows:

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3 Public Service senior executive bands

For the purposes of the Government Sector Employment Act 2013, the Public Service senior executive bands are as follows:

- BAND 4 – Secretary level*
- BAND 3 – Deputy Secretary level*
- BAND 2 – Executive Director level*
- BAND 1 – Director level*

13. The SOOR Act, as amended, outlines those matters to be taken into consideration by the Tribunal in making its determinations. Section 24Q provides that the Premier may notify the Tribunal of matters which the Tribunal should take into consideration when making determinations of the remuneration packages for senior executives and the Tribunal must take into consideration any such matters.

14. The Government's submission in respect of the Initial Determination provided the following background and context for the initial determination:

"The GSE Act creates a single executive structure across the Public Service, with common employment arrangements. It replaces the existing Chief Executive Service, eight-level Senior Executive Service, and award-based Senior Officer structure and equivalents, with the Public Service senior executive...

Transition to the new arrangements is expected to take place over three years from the commencement of the Act...The transitional provisions allow for existing employees to be no worse off financially at the point of transition if placed in a role of equivalent value to the one they occupied under the PSEM Act arrangements. The practicality and ease of the transition will be greatly assisted if remuneration rates remain the same, at least initially, for work of comparable value...

15. The Government submitted that the initial remuneration ranges for Bands 1 to 4 of the draft determination be equivalent to those of Senior Executive Service (SES) levels 1 to 8, having regard to the work value ranges.

16. The Government also submitted that the existing recruitment and retention allowances should not form part of the initial determination for PSEs as the new executive arrangements would provide for a different approach to market-based recruitment allowances.

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17. On 3 February 2014 the Tribunal, having regard to the prospective bands in which senior executives may be employed and to the Government submission, and after considering the views of the Assessors, determined that the remuneration ranges for the PSSE bands would be equivalent, based on corresponding work value ranges, to those determined for the SES Levels 1 to 8 in the Tribunal's 2013 Annual Determination for the Chief Executive and Senior Executive Services made on 27 September 2013 (the 2013 Annual Determination).
18. With effect from 24 February 2014 the remuneration package ranges for Public Service senior executives were determined as follows:

Band	Per annum range		
Band 4 - Secretary level	\$422,501	to	\$488,100
Band 3 - Deputy Secretary level	\$299,751	to	\$422,500
Band 2 - Executive Director level	\$238,301	to	\$299,750
Band 1 – Director level	\$167,100	to	\$238,300

19. Section 24O of Part 3B of the SOOR Act provides for the Tribunal to make an annual determination to take effect from 1 July in that year. On that basis the initial determination applied from the date of commencement, being 24 February 2014 and operates up to 30 June 2014.

Section 3

Government submission

20. The Government submission provides an overview of the State's recent economic performance and makes a recommendation in respect of the quantum of the increase to apply to the PSSEs. Extracts appear below:

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Economic performance and outlook for NSW

21. The submission was drafted prior to the release of the 2014-15 Budget and is largely based on economic forecast and fiscal commentary from the 2013-14 Half-Yearly Review (HYR), December 2013.
22. The Government's fiscal strategy is enshrined in the *Fiscal Responsibility Act 2012* with the key objective being to maintain operating balances and debt positions that are consistent with the State's triple A credit rating. The 2012-13 Budget and the 2013-14 HRY deliver on the fiscal strategy and address critical infrastructure spending while lowering debt, consistent with maintaining the triple-A credit rating.
23. NSW real economic growth as at the HYR was revised down by $\frac{1}{4}$ of a percentage point compared with the 2013-14 Budget, to $2\frac{1}{2}$ per cent for both 2013-14 and 2014-15. This reflects a softer global outlook, which has weakened both national and NSW economic prospects. A more gradual transition to non-mining investment is now expected.
24. The 2013-14 HYR forecasts a traditional deficit of \$1 billion in 2013-14 before returning to surplus in 2014-15, with growing surpluses thereafter. Even including accounting standard amendments, the HYR forecasts a return to surplus in 2016-17. These surpluses will lower the government's net borrowing requirement, requiring less debt to fund the infrastructure program
25. Expenses growth has been brought under control by delivering on the savings measures announced in the previous three Budgets. The wage policy is a key element, given that employee expenses account for nearly one-half of budget expenses. The impact of the wages policy is clearly evident in employee-related cost growth rates over the forward estimates in this Budget. Total expenses have now come in under budget for three consecutive years.
26. Controlling employee-related expenses continues to be a key focus in the Government's expense restraint. The 2013-14 Budget and 2013-14 HYR continue to deliver the benefits of the NSW Public Sector Wages Policy 2011. The policy provides for

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remuneration increases of 2.5 per cent per annum, with increases above this amount funded by realised employee-related cost savings. The Government's policies relating to better management of excess employees, a labour expense cap and more stringent controls on excessive annual leave accruals also assist in delivering better fiscal outcomes.

27. In 2013-14, employee expenses are estimated to be 47.6 per cent of the total expenses, including superannuation expense (6.3 per cent) and other employee expenses (41.3 per cent) composed principally of wages and salaries. Superannuation expenses are projected to increase in line with non-salary costs, plus changes in the federally legislated rate of contribution. Non-superannuation employee expenses will continue to increase but at a slower rate over the forward estimates.
28. Wages growth has slowed to below trend over 2012-13 and early 2013-14. Through the year to the March quarter, the NSW Wage Price Index grew by 2.6 per cent, reflecting subdued growth in both public and private sector wages. As at the HYR, NSW wage growth is expected to continue to grow below trend at 2 $\frac{3}{4}$ per cent in 2013-14 and 3 per cent in 2014-15. This subdued growth reflects a soft labour market and subdued inflation expectations. The Government's wages policy will continue to assist in moderating public sector wages growth.
29. The latest Consumer Price Index (CPI) figures for the March quarter 2014 show annual CPI growth to 2.8 per cent in Sydney, and 2.9 per cent across the average of 8 capital cities. Sydney CPI is expected to moderate to 2 per cent in 2013-14, reflecting low underlying inflation pressures and the removal of the carbon tax (reducing headline inflation by $\frac{3}{4}$ of a percentage point). The Sydney CPI is expected to then pick up to 2 $\frac{3}{4}$ per cent in 2014-15 in line with trend growth in output and employment. Current Reserve Bank of Australia (the RBA) forecasts, as at the May 2014 Statement of Monetary Policy, are that underlying inflation will reach the upper bound of the RBA target rate before returning to the mid-section of the target range in 2015-16.

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Government's submitted increase

30. The Government submits that any increase should be discounted from 2.5 per cent to 1.88 per cent to have regard to the earlier commencement date of 1 July.
31. Past determinations have provided increases in remuneration effective from 1 October each year. However, amendments to SOOR Act have now brought forward the date of effect from 1 October to 1 July.
32. The result of the change is that any increases in remuneration will apply three months earlier than past increases and would (if not taken into account) result in employees receiving comparatively greater remuneration in 2014-15 than would have been paid based on the previous arrangements – leading to effectively higher wages growth than legislated under the NSW Public Sector Wages Policy 2011.
33. The Government submission includes the following example to clarify the issue:

“For example, an employee with a salary of \$200,000 who receives an increase of 2.5 per cent from 1 July 2014 would earn \$1,281 more in 2014-15 than if they received the same increase from 1 October 2014 (\$210,125 compared to \$208,844 for 2014-15). Salary growth over this year would effectively be 3.1 per cent in 2014-15.

It is therefore necessary to adjust any increase in remuneration to take account of this timing change by discounting the quantum of the increase by 25 per cent (i.e. one quarter representing three months out of 12 months). Under the above scenario, an increase of 1.88 per cent from 1 July 2014 results in the same remuneration being paid as applying a 2.5 per cent increase from 1 October.”

34. The Government submits that the Tribunal should approve an annual increase of 1.88 per cent for PSSEs from 1 July 2014 on the basis that this is consistent with the NSW Wages Policy and reflects the NSW Government's intent, pursuant to section 6AA of the SOOR Act and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* (the IR Regulation 2011).
35. The Tribunal notes that IR Regulation 2011 was remade on 24 June 2014, after the Government drafted its submission, and is now the *Industrial Relations (Public Sector*

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Conditions of Employment) Regulation 2014 (the IR Regulation 2014). The remaking of IR Regulation 2014 confirms the Government policies that are required to be given effect to by the Industrial Relations Commission (the IRC). In particular, it confirms the Government's policies regarding the management of excess public sector employees and the 2.5 per cent cap on increases in remuneration and the cost of other conditions of employment (including superannuation).

Section 4

2014 Determination

Superannuation Guarantee Contribution: Changes to legislation and further increases

36. In determining remuneration for the PSSEs the Tribunal is required pursuant to Section 6AA of the SOOR Act to give effect to the same policies on increases in remuneration as those that the IRC is required to give effect to under section 146C of the *Industrial Relations Act 1996* (the IR Act) when making or varying awards or orders relating to the conditions of employment of public sector employees.
37. The current policy on wages pursuant to section 146(1)(a) of the IR Act is specified in IR Regulation 2014 which was made on 24 June 2014. The effect of IR Regulation 2014 is that public sector wages cannot increase by more than 2.5 per cent. Any increase beyond 2.5 per cent can only be awarded if sufficient employee-related cost savings have been achieved to fully offset the increased employee-related costs. IR Regulation 2014 replaces IR Regulation 2011 and Clause 6 provides the following clarification in relation to superannuation employment benefits:

“...Other policies

- (1) *The following policies are also declared, but are subject to compliance with the declared paramount policies:*
- (a) *Public sector employees may be awarded increases in remuneration or other conditions of employment but only if employee-related costs in*

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respect of those employees are not increased by more than 2.5 % per annum as a result of the increases awarded together with any new or increased superannuation employment benefits provided (or to be provided) to in respect of the employees since their remuneration or other conditions of employment were last determined.

*(4) In subclause (1)(a), **new or increased superannuation employment benefits** means any new or increased payments by an employee to a superannuation scheme or fund of an employee as a consequence of amendments to the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth or the State Authorities Non-contributory Superannuation Act 1987.*

38. IR Regulation 2014 is the most recent change in a series of actions taken by the Government to give effect to its policy in relation to the impact of increases in superannuation employment benefits.
39. The SGC increase does not affect the Tribunal’s ability to determine a remuneration increase of up to 2.5 per cent for PSSEs as they receive a total remuneration package, from which the cost of the SGC must be funded.
40. In accordance with section 24O of the SOOR Act the Tribunal determines remuneration packages for the PSSE. Section 24M of the SOOR Act provides for the following definition of a remuneration package for the PSSE:

*“s24M **remuneration package** means the annual amount payable to a senior executive under the Government Sector Employment Act 2013:*

- (a) as monetary remuneration for the executive, or*
- (b) partly as that remuneration and partly as the cost to the employer of the executive’s employment benefit*

41. Section 40 of the GSE Act outlines the remuneration, benefits and allowances for senior executives. These include:

“(4) For the purposes of this Division, employment benefits for a Public Service senior executive are:

contributions by the executive’s employer to a superannuation scheme or fund of the executive,...”

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Adjusted Annual Increase

42. The remuneration package ranges for the PSSEs bands are based on the remuneration package ranges for the SES that increased by 2.5% effective from 1 October 2013, as determined in the 2013 Annual Determination. To ensure the PSSEs remuneration package ranges and the SES remuneration package ranges do not increase by more than 2.5 per cent over a twelve month period, it is appropriate that the increase to take effect from 1 July 2014 be discounted to reflect the start date of 1 July rather than the later date of 1 October, on which the Tribunal's previous determinations have taken effect.

Conclusion

43. The Tribunal, after considering the views of the Assessors and having regard to the provisions of section 6AA of the SOOR Act, determines an increase of 1.88 per cent for the remuneration package ranges for PSSEs bands, effective on and from 1 July 2014. The new rates are as set out in Determination No. 1.

44. Transitional arrangements are in place until up to 24 February 2017 for 'transitional former senior executives', that is, people who were in the Chief Executive Services or SES under the former PSEM Act immediately before it was repealed. The Tribunal has made a separate determination under Part 3A of the SOOR Act for transitional former senior executives.

Statutory and Other Offices Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014

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Determination No. 1 – Remuneration Package Ranges for the PSSEs

The Tribunal determines that the remuneration package ranges for Public Sector Senior Executive holders effective on and from 1 July 2014 shall be:

Band	Per annum range		
Band 4 - Secretary level	\$430,451	to	\$497,300
Band 3 - Deputy Secretary level	\$305,401	to	\$430,450
Band 2 - Executive Director level	\$242,801	to	\$305,400
Band 1 – Director level	\$170,250	to	\$242,800

The Statutory and Other Offices Remuneration Tribunal

(Signed)

Helen Wright

Dated: 11 July 2014