

REPORT

and

DETERMINATION

under the

STATUTORY AND OTHER OFFICES
REMUNERATION ACT, 1975

CHIEF EXECUTIVE AND SENIOR EXECUTIVE SERVICES

28 AUGUST 1998

CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE¹

Background:

1. In the following sections 2 – 14 there is a summary of significant changes in the Senior Executive Service as they relate to the work of the Tribunal.
2. The Public Sector Management (Executives) Amendment Act 1989, established the Chief Executive Service and Senior Executive Service. Provision was made in the Statutory and Other Offices Remuneration Act 1975 (the Act), at section 24C, for the Statutory and Other Offices Remuneration Tribunal, not later than 31 August in each year, to make a determination of the remuneration packages for executive office holders on and from 1 October in that year. Section 24H requires the Tribunal to make a report to the Minister regarding this determination.
3. In making its initial determination in 1989 on the remuneration levels for the SES, the Tribunal was informed of the detailed design of the SES, including the contractual nature of appointments and individual performance agreements detailing the responsibilities of the officer and the criteria upon which that officer will be assessed at annual performance reviews. The Government decided that it would adopt remuneration packages expressed as total cost of employment and competitive with the private sector executive market. A relativity with that market was established with the median being regarded as the benchmark. Rates were fixed in the initial determination for both the general management and the following specialty markets; legal, financial, engineering and data processing. Medical specialist market rates were added in 1990. Those offices covered by the new scheme were listed in the Schedules 3A and 3B of the Public Sector Management Act 1989.
4. Government submissions to the Tribunal have, since 1989, contained details of private market remuneration for jobs of equivalent work value which have been obtained from remuneration consultants. In 1995 the Tribunal questioned the relevance of continued private market comparisons given the Government continuously noted the increasing disparity in remuneration between the SES and the private market but at the same time had not recommended increases to restore the 1989 position.

5. At the time the SES was established, some officers in the Public Office Holders Group elected, pursuant to section 11A of the Act to receive remuneration packages under similar arrangements applicable to the SES. In the past the remuneration increases for these officers was included within the SES structure, however, following a recommendation from the Government, the Tribunal, for reasons outlined in its Report of 31 August 1995 determined the specific remuneration for each office holder.
6. For the 1995 review the Government changed the structure of the SES by abolishing the specialist market rates (excluding the medical specialist markets) and reducing the general management rates to four Bands. The Government subsequently divided each of the four Bands into upper level and a lower level by inserting within each Band a median rate beyond which progression was possible subject to work value.
7. As part of the 1996 review the Tribunal introduced a recruitment and retention allowance to address the difficulties the Government was experiencing in recruiting and retaining SES officers with specialist skills following the abolition of the specialist market rates.
8. The Tribunal's 1996 review resulted in an increase in the SES remuneration Bands of 3 percent from 1 October 1996.
9. As part of the 1996 review the Tribunal also examined more closely the issues of performance pay. The Tribunal noted that SES numbers had been reduced by one third and that changes affecting the SES had resulted in some of their conditions of employment being eroded. The Tribunal concluded that a greater burden had been placed on the remaining SES officers to implement the Government's policies as well as the management of Government business. Because of these circumstances the Tribunal determined an additional increase of 3 percent at the top of each range from 1 January 1997 to provide Ministers (in the case of CEOs) and CEOs (in the case of SES officers) with additional flexibility to reward performance.
10. The remuneration rates for section 11A office holders was also increased by 3 percent from 1 October 1996 and for reasons outlined in the 1996 Report (paragraphs 57-58)

they received a 1.5 percent increase from 1 January 1997. For section 11A office holders in 1997, the Tribunal determined that each office holder's remuneration would be increased by 5 percent from 1 October 1997.

11. In 1997 the Government had advised that it now favoured an 8 level structure. The Tribunal noted that it is the Government's prerogative as to how it structures the SES and, as such, the Tribunal determined remuneration in accordance with the Government's new structure. In its submission to the 1996 review the Government alerted the Tribunal to potential problems budget sector agencies would face in recruiting and retaining high calibre executives when State Owned Corporations (SOCS) will be able to offer remuneration packages beyond the levels determined by this Tribunal. The Government's survey revealed that of the 16 SOCS, 27 percent utilise the Tribunal's remuneration ranges. The remaining organisations' remuneration structures reflect a commercial focus that dominates the level of remuneration paid. The Government submission revealed that movement of officers between the SES and SOCS is "*...insufficient to draw any conclusions.*"
12. As part of the 1997 review the Tribunal considered that the application of the Recruitment and Retention Allowance should be available to all SES levels. The Tribunal retained the one allowance amount for each two SES levels. The minimum rates were removed and anomalies in the maximum rates corrected by setting them at approximately 10 percent of the maximum of the corresponding remuneration level.
13. The Tribunal's review in 1997 resulted in an increase in the SES remuneration in that the minimum rates for each level increased by 2 percent and the maximum rates increased by 6 percent on and from 1 October 1997. The remuneration package levels for the Medical Specialist markets were similarly increased.
14. In 1997 the Tribunal adopted the Government's recommendation not to specify separately the performance component in remuneration and hence allow the CEO in each year to move the officer's remuneration to any point along the remuneration range for the respective level. Thus the performance component for any one year becomes built into the base for determining the performance pay component for the next year.

The Tribunal proposed for Government consideration a new model that would require CEOs to make a specific evaluation of performance for each year.

1998 Submissions

Government submission

15. For 1998 the Government submission focused on issues arising from the Tribunal's 1997 Determination. In particular, Performance Pay, Recruitment Retention Allowance, and Senior Officers Classification.
16. The submission showed that 713 SES officers received a performance pay increase since October 1997 with a range between 2 and 19 percent. The 19 percent primarily resulted from a reclassification of the positions. The Government has not yet formed a view of the performance pay model proposed by the Tribunal but has established a working party to examine the matter.
17. The Recruitment and Retention allowance to May 1998 was paid to 50 officers and half of these have been paid at the maximum rate. The submission also stated that CEOs have requested that consideration be given to implementing the allowance within the term of a SES contract rather than being limited to the initial appointment and subsequent reappointment.
18. The submission stated that the introduction of the Senior Officer classification had resulted in the number of such positions being 25 percent of the number of SES positions in levels 1-3. The Senior Officers Salaries Award ensures that the Senior Officers receive award increases equal to Crown Employees. Also that negotiations with the Public Service Association need to be finalised concerning a foreshadowed increase of 5 percent from January 1999.

19. The submission again raised the issues of salary compression resulting from increases gained by non SES officers through awards and enterprise agreements, skill shortage and project management allowances and the introduction of the Senior Officer classification.
20. Wage and Salary movements for the public sector were identified as between 3% and 6% across all groups for both 1997 and 1998. Treasury forecasts included in the government submission forecast a decline in Average Weekly Earnings by 0.3% and a slight increase of 1.1% in the CPI for 1998/99 financial year. Also, advice from independent consultants on remuneration movements in the private sector forecast average national remuneration increases of about 4.4% across all job families and industry sectors.

Auditor General's Submission

21. The Auditor General revisited issues from the Tribunal's 1996 and 1997 determinations and requested that the Tribunal recognise and address award increases to non SES positions, the fall in relativity of SES remuneration with the private sector, the remuneration paid by State Owned Corporations (SOCS), and adequately recognise the differential treatment of fringe benefits and superannuation taxation.
22. In particular he emphasised the difficulties faced by the Audit Office in recruitment because of its direct competition with the private sector and the need therefore for SES remuneration to be competitive with the private sector.
23. Data was supplied to demonstrate issues of salary compression between SES and Senior Officer grade. The submission also expressed a concern that Fringe Benefits taxation issues had not been addressed in the past.

NSW Crime Commissioner

24. The Commissioner is for remuneration purposes classified as a section 11A office holder. A statutory office with access to SES remuneration arrangements. The Commissioner is seeking an increase in remuneration based on changes to the role and responsibilities of the position.
25. The Tribunal has given consideration to the extensive changes in the role and responsibilities in the position since the last evaluation in 1989 as the “Chairman of the State Drug Crime Commission”. In this regard the Tribunal sought independent evaluation of the position from the Premier’s Department which confirms that there had been changes in responsibilities.

Treasury forecasts

26. The Government Submission included advice from The Treasury indicating that national economic forecast for 1998/99 is growth of approximately 3 percent with NSW growth expected to be slightly below the national average for the same period. Inflation is expected to move upward over the current financial year by 2¼ percent and Average Weekly Earnings are expected to grow to 4 percent for the same period.
27. In the 1997 review the Tribunal suggested that for the 1998 review Premier’s Department provide figures with a more direct relevance to the SES. The government submission includes advice from Treasury that existing awards and agreements will continue to be funded at the former 3 percent level and that 1998/99 budget and forward estimates provide for a general 2 percent salary wage increase. *“Any wage increases negotiated beyond these levels would normally be expected to be funded by agencies from their existing resources. Senior Executive Service (SES) increases are normally met from the general provision for salary/wage increases.”*
28. Treasury advice included, *“There was a significant deceleration in the rate of wage growth in federal enterprise bargaining agreements during the first half of 1998/99. And that the Australian Industrial Relations Commission’s Safety Net Review in April*

1998 granted an increase of \$10 to \$14 per week (equivalent to 4% at the minimum wage rate) to workers not having access to other mechanisms to secure wage increases”

29. The Government has provided details from private sector remuneration consultants who predict private sector remuneration for senior executives will increase approximately 5.4 percent in the ensuing 12 months.

1998 REVIEW

Performance Pay

30. As stated in the 1997 Report, (paragraph 38) the 1997 Tribunal Determination proposed a scheme to allow the Government to move to embrace a clearer performance pay scheme for SES/CES. The Government has established a Committee to study the proposal but no report is yet available. The Tribunal remains concerned about the current arrangements since, as presently structured, the performance pay reward in any one year becomes imbedded in fixed remuneration which then becomes the base for performance decisions in the next year.
31. While the Tribunal will await the Government's 1999 submission on a new model it is not prepared to continue the present arrangements in this determination. The annual variable reward for performance must be clearly identified and distinct from fixed remuneration and should be determined in association with the agency's annual performance review cycle.
32. Therefore the Tribunal will determine for each SES level a range of amounts available to be paid as a lump sum for annual performance. The Minister will determine the actual amount for each CES officer and the Department Head will determine the actual amount for each SES officer. Payments should fit with the cycle for annual review of performance in each agency and become effective from 1 January 1999 and no later than 30 June 1999 at the discretion of the agency.

33. In making each individual decision it is the expectation of the Tribunal that the CEO will assess the performance of each officer and that no payment will be made to an officer whose performance is merely satisfactory. Payments are to be determined within the range for those whose performance is regarded as very satisfactory or superior and the maximum of the range for those determined as being outstanding.
34. In summary, all SES/CES officers become eligible for performance pay within a determined range with payments as a lump sum from 1 January 1999 to 30 June 1999. Decisions are to be made by the Minister in the case of CES officers, and Department Heads in the case of SES officers.
35. These lump sum payments provided under the Performance Pay system will not count for superannuation purposes.

Recruitment and Retention Allowance

36. The Tribunal notes that the management of recruitment and retention allowances is under the control the Premier's Department. Data provided by the Premier's Department shows that 50 allowances, covering 25 agencies, were approved between October 1996 and May 1998 of which 26 have been paid at the maximum rate.
37. Both the Government submission and the Auditor General's submission raise the prospect of utilising the Recruitment and Retention Allowance within the term of contract to circumvent the loss of executives. No specific detail of how many SES left the NSW Public Service to take up employment in the private sector has been provided to the Tribunal but the Auditor General's submission identifies 2 SES departures from the Audit Office to the private sector.
38. The Tribunal's determinations provide great flexibility to Ministers and Department Heads and it is not persuaded to extend this further by allowing this allowance to be determined within a contract period. To assist Agencies the Premier's Department will be issuing further guidelines regarding its approval processes. The Tribunal expects that this will alleviate the special factors relating to the Audit Office.

Award Increases

39. Tribunal notes that the Crown Employees (Public Sector - Salaries June 1997) Award was negotiated between the NSW Government and the Public Service Association and Professional Officers Association. This award provides increases totalling 16 percent over 3 years commencing 1 January 1997 of which 7 percent is subject to productivity savings. Increases of 11 percent have already been paid with a further 5 percent foreshadowed from 1 January 1999.
40. The Tribunal has noted other main public sector occupational groups (teachers, fire fighters and nurses) have negotiated similar salary increases over similar time frames.
41. In respect of enterprise agreements the Tribunal notes that while they do offer the opportunity for non SES officers covered by the Agreement to receive further increases in their rates of pay these are only available through productivity gains and/or tradeoffs.

Senior Officer Classification

42. The Senior Officer Classification was introduced in December 1996 to provide additional capacity for agencies to recognise work value of non SES positions.
43. The Senior Officer structure is salary based, and provides for three grades. Each grade has the equivalent work value of the lowest three levels of the SES. Care must be taken in comparing the remunerations since the SES has total cost of employment whereas the Senior Officer receives benefits in addition to salary, eg. Superannuation. These officers will be eligible to receive increases totalling up to 16 percent over three years in line with the recent Crown Employees (Public Sector - Salaries June 1997) Award and therefore this is directly relevant to SES remuneration.

Salaries in State Owned Corporations

44. The Tribunal has been asked by the Auditor General to have regard to remuneration paid to senior executives in State Owned Corporations. This factor is relevant but only as a minor part of the total consideration by the Tribunal of general economic indicators and salary movements in both public and private sectors.

Salary Compression

45. The Government has again raised the issue of salary compression and has highlighted the introduction of the Senior Officer Classification, the graded officers recent pay award (Crown Employees (Public Sector - Salaries June 1997) Award), enterprise agreements, and skill shortage and project management allowances as matters for consideration in this regard.
46. The Tribunal considers that compression between SES and Senior Officer should not occur on this occasion and therefore in the determination the base remuneration plus performance pay must be structured to prevent this happening. The Tribunal acknowledges that the administration of Grades and Classifications is a matter for the Government. However the salary and conditions of Senior Officers can have serious implications and produce compression of the remuneration and conditions for SES officers. The Tribunal would appreciate further advice from the Government on this issue for the 1999 determination.

Commonwealth Issues

47. In respect of increased costs for motor vehicles the Tribunal acknowledged that the costs of leasing a Government owned motor vehicle increased (1997 Report and Determination para 78). The government has advised that the sales tax component is now shared between the employer and the SES officer based on business/private use ratio.
48. The Auditor General claims that the adverse effect of fringe benefits taxation (FBT) changes to SES officers had not been addressed. This is not the case as the Tribunal in a special determination of 31 March 1994 acknowledged that the FBT changes would impact adversely on the take home pay of SES officers and determined an increase of 6% for every SES remuneration package to overcome this problem.
49. On the matter of taxation the Tribunal does not favour special compensation for matters which have resulted from higher taxes introduced through legislation by the Commonwealth Government and which apply equally to all sections of the community.

Section 11A Office Holders

50. At the time the Senior Executive Service (SES) was established, some officers in the Public Office Holders Group elected, pursuant to section 11A of the Act, to receive remuneration packages under similar arrangements applicable to the SES. In the past the remuneration increases for these officers was included within the SES structure however, following a recommendation from the Government, the Tribunal, for reasons outlined in its Report of 31 August 1995, determined the specific remuneration for each office holder. In that Report the Tribunal noted that while these officers received SES type remuneration packages their conditions of employment linked them more closely with the Public Office Holder Group.

51. Section 11A Office Holders are statutory appointees who exercise independent statutory functions and some of whom also have CEO type responsibilities. These office holders were nominated by the Premier, pursuant to Section 11A of the Act to have access to remuneration packaging identical to the SES. Unlike the SES however, they are not subject to contract employment or formal performance appraisal. Indeed it would be inappropriate to have a performance pay component in their remuneration. However, their remuneration should recognise that staff reporting to Section 11A Office Holders are eligible for performance pay and they carry a heavy responsibility for productivity improvements in their respective agencies.

Conclusion

52. The Tribunal has examined carefully the economic and remuneration movements information supplied by the Government. Significant in the Tribunal's deliberations has been the recent increases paid to Crown Employees, the further foreshadowed 5% from 1st January 1999, and the productivity based component of these increases.

53. The SES plays a significant role in the delivery of the productivity increases for public servants under the Award. Further salary compression is not justified and for this reason the Tribunal cannot agree with the Government recommendation for a 3 percent increase to both the maximum and minimum of the SES/CES bands.

Instead a 4 percent increase has been determined as set out in Annexure A hereunder on and from 1 October 1998. The remuneration package levels for the Medical Specialist markets have similarly been increased.

54. For this review the Tribunal has made a specific performance pay related determination. A one off lump sum payment is available to all SES/CES officers providing that their services are assessed as being very satisfactory or better.
55. Further the Tribunal considers it appropriate to maintain the Recruitment and Retention Allowance at existing levels and maintain the availability of the Allowance to levels 7 and 8 as indicated in Annexure A of this Determination.
56. In the case of Section 11A officers (Public Office Holders) who are not eligible for performance pay, an increase of 6 percent is determined as indicated in Annexure B, on and from 1 October 1998.
57. In respect to the Commissioner NSW Crime Commission, the Tribunal has accepted that the duties and responsibilities have been enlarged and this is recognised in the determination.
58. As a result of these determinations the Tribunal considers that remuneration to the CES/SES will be maintained at levels which are just and are reasonable and which enable flexibility to reward performance.

The Statutory and Other Offices
Remuneration Tribunal

Gerald Gleeson

Dated: 28 August 1998

ANNEXURE A

DETERMINATIONS OF THE REMUNERATION PACKAGES OF THE CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE

Determination No 1.

The Tribunal determines remuneration package ranges per annum for executive office holders on and from **1 October 1998** shall be:

<u>CES/SES</u>	<u>Per annum range</u>		
Remuneration Level 8	\$245,525	to	\$302,925
Remuneration Level 7	\$208,045	to	\$262,780
Remuneration Level 6	\$173,160	to	\$208,895
Remuneration Level 5	\$151,160	to	\$185,350
Remuneration Level 4	\$138,320	to	\$161,235
Remuneration Level 3	\$126,010	to	\$148,055
Remuneration Level 2	\$112,940	to	\$130,515
Remuneration Level 1	\$103,945	to	\$120,890

Determination No 2-Performance Pay CES/SES

Each officer shall be eligible for a lump sum payment for the period up to 30 June 1999 within the ranges specified herewith. The Performance Pay will apply for those **CES/SES** officers where it has been certified by the Minister or Department Head, through performance review systems, that the officer's performance has been evaluated as very satisfactory, superior or outstanding. Eligibility for these payments to be effective from 1 January 1999 and no latter than 30 June 1999.

<u>CES/SES</u>	<u>Performance pay range</u>
Levels 7 and 8	\$6,000 to \$12,000
Levels 5 and 6	\$4,000 to \$ 8,000
Levels 3 and 4	\$3,000 to \$ 6,000
Levels 1 and 2	\$2,500 to \$ 5,000

ANNEXURE A (Cont.)

**DETERMINATIONS OF THE REMUNERATION PACKAGES OF THE CHIEF
EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE**

Determination No 3- Recruitment and Retention Allowance

To the remuneration package amounts determined above there shall be added a Recruitment and Retention Allowance up to the maximum for each Level as set out hereunder. The Allowance will apply for new SES offices and contract renewals, where it has been certified that a specific skill is necessary for recruitment purposes and the performance of the duties of the position.

Current SES officers in receipt of Specialist Allowance will continue to receive it at their existing rate. The Allowance is only re-negotiable at the time of entering into a new contract of employment.

<u>CES/SES</u>		<u>Maximum Allowance</u>
Levels 7 and 8	up to	\$30,000
Levels 5 and 6	up to	\$20,000
Levels 3 and 4	up to	\$15,500
Levels 1 and 2	up to	\$12,500

Determination No 3.

The Tribunal determines remuneration package ranges per annum for offices identified as requiring medical specialist skills on and from **1 October 1998** shall be:

<u>Specialist Medical Skills</u>	<u>Per Annum range</u>		
Remuneration Level 6	\$191,615	to	\$234,715
Remuneration Level 5	\$190,780	to	\$226,180
Remuneration Level 4	\$187,540	to	\$217,650
Remuneration Level 3	\$178,955	to	\$207,685
Remuneration Level 2	\$167,930	to	\$194,890
Remuneration Level 1	\$154,905	to	\$177,820

ANNEXURE A (Cont.)

**DETERMINATIONS OF THE REMUNERATION PACKAGES OF THE CHIEF
EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE**

Determination No 4.

The Tribunal determines remuneration package ranges per annum for offices identified as requiring general medical skills on and from **1 October 1998** shall be:

<u>General Medical Skills</u>	<u>Per annum range</u>		
Remuneration Level 2	\$134,840	to	\$156,475
Remuneration Level 1	\$123,925	to	\$142,255

Determination No 5 -Performance Pay - Specialist Medical Skills/General Medical Skills

Each officer shall be eligible for a lump sum payment for the period up to 30 June 1999 within the ranges specified herewith. The Performance Pay will apply for those **Medical Specialist/General Medical Skills** officers where it has been certified by the Department Head, through performance review systems, that the officer's performance has been evaluated as very satisfactory, superior or outstanding. Eligibility for these payments to be effective from 1 January 1999 and no latter than 30 June 1999.

<u>Specialist Medical Skills</u>	<u>Performance pay range</u>
Levels 5 and 6	\$5,000 to \$10,000
Levels 3 and 4	\$4,000 to \$ 8,000
Levels 1 and 2	\$3,000 to \$ 6,000

<u>General Medical Skills</u>	<u>Performance pay range</u>
Levels 1 and 2	\$2,500 to \$ 5,000

The Statutory and Other Offices

Remuneration Tribunal

Gerald Gleeson

Dated: 28 August 1998

ANNEXURE B

**DETERMINATION OF REMUNERATION OF PUBLIC OFFICE HOLDERS WHO
HAVE ELECTED TO BE PROVIDED WITH EMPLOYMENT BENEFITS PURSUANT
TO SECTION 11A OF THE ACT**

Determination No 6.

The Tribunal determines remuneration package ranges per annum for Public office holders who have elected to be provided with employment benefits pursuant to section 11A of the Act on and from **1 October 1998** shall be:

<u>Public Office Holder</u>	<u>Remuneration</u>
Auditor General	\$253,560
Chairperson, NSW Crime Commission	\$253,560
Public Trustee	\$189,280
Electoral Commissioner	\$178,295
Valuer General	\$178,295
Full Time Member, Independent Pricing and Regulatory Tribunal	\$178,295
Solicitor for Public Prosecutions	\$152,520
President, Anti Discrimination Board	\$148,575

The Statutory and Other Offices

Remuneration Tribunal

Gerald Gleeson

Dated: 28 August 1998